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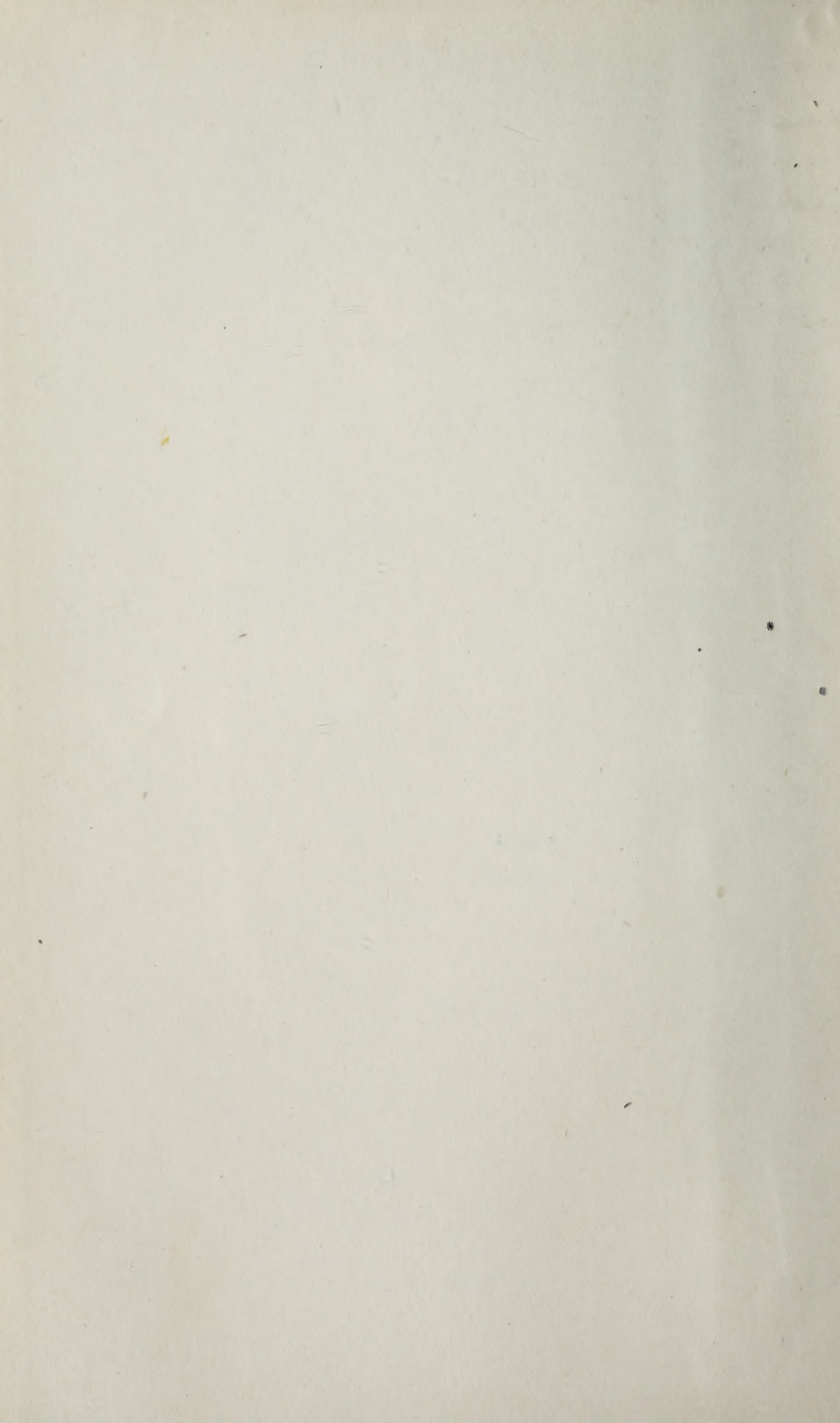
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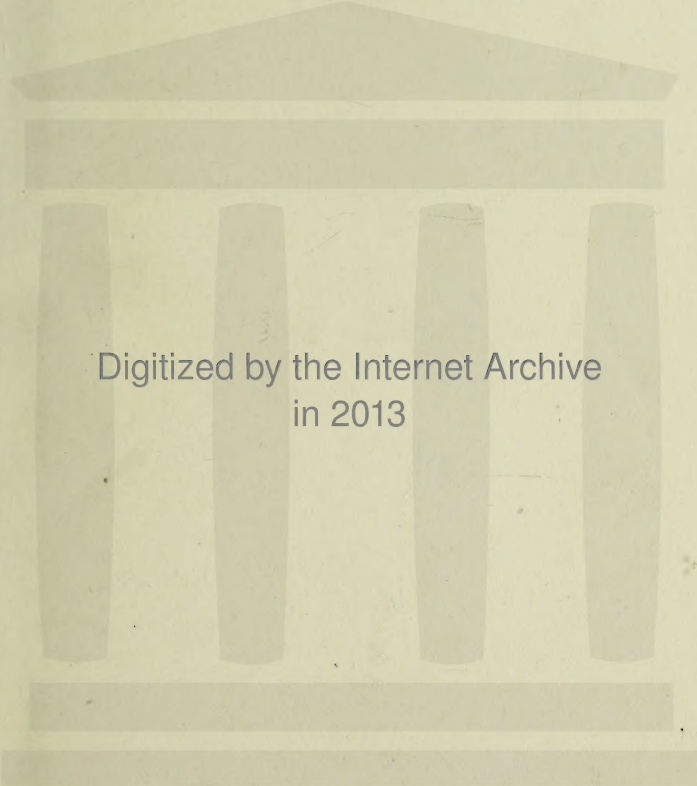
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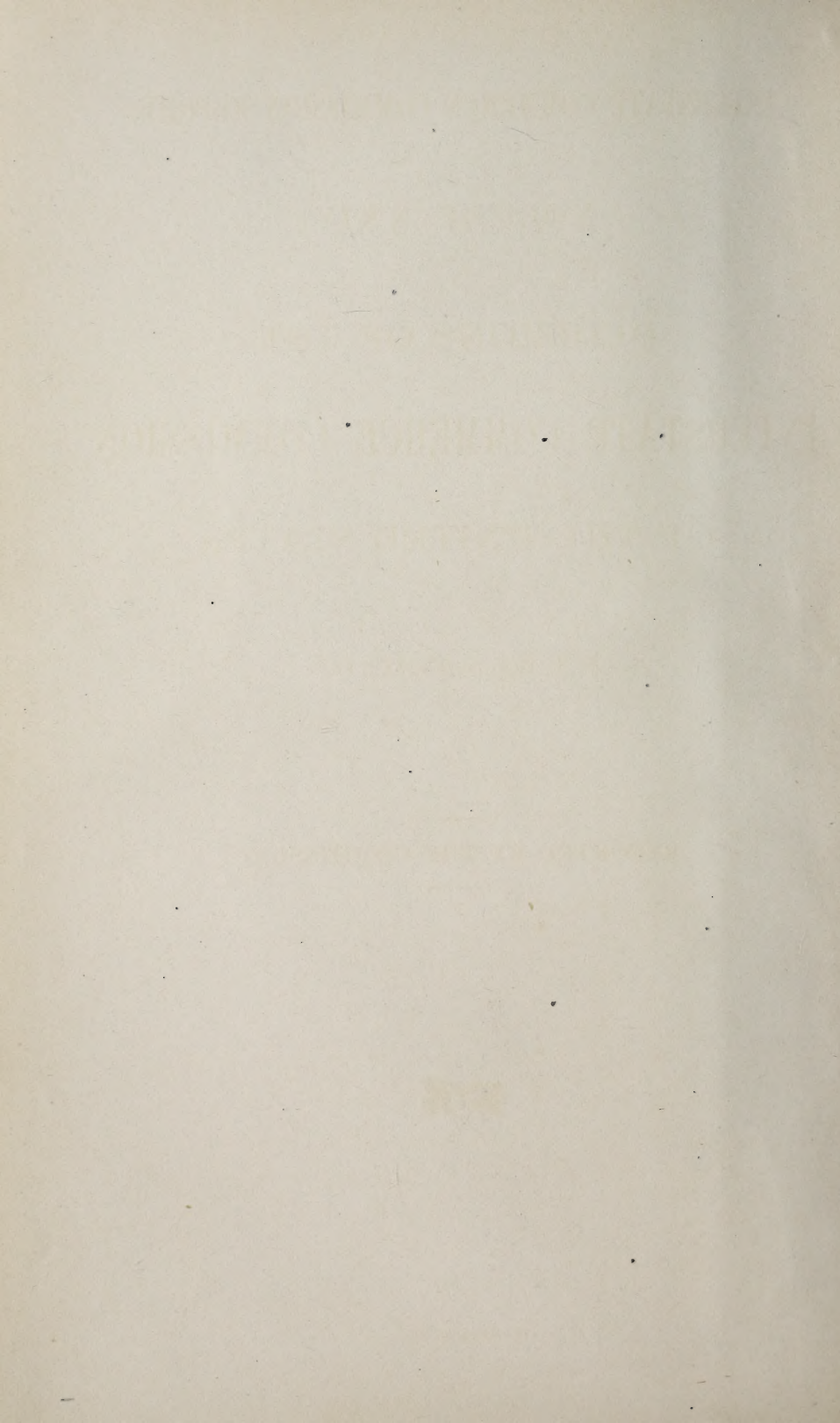


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INTERSTATE COMMERCE COMMISSION REPORTS

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VOLUME XXIV

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DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES

JUNE, 1912, TO OCTOBER, 1912

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REPORTED BY THE COMMISSION

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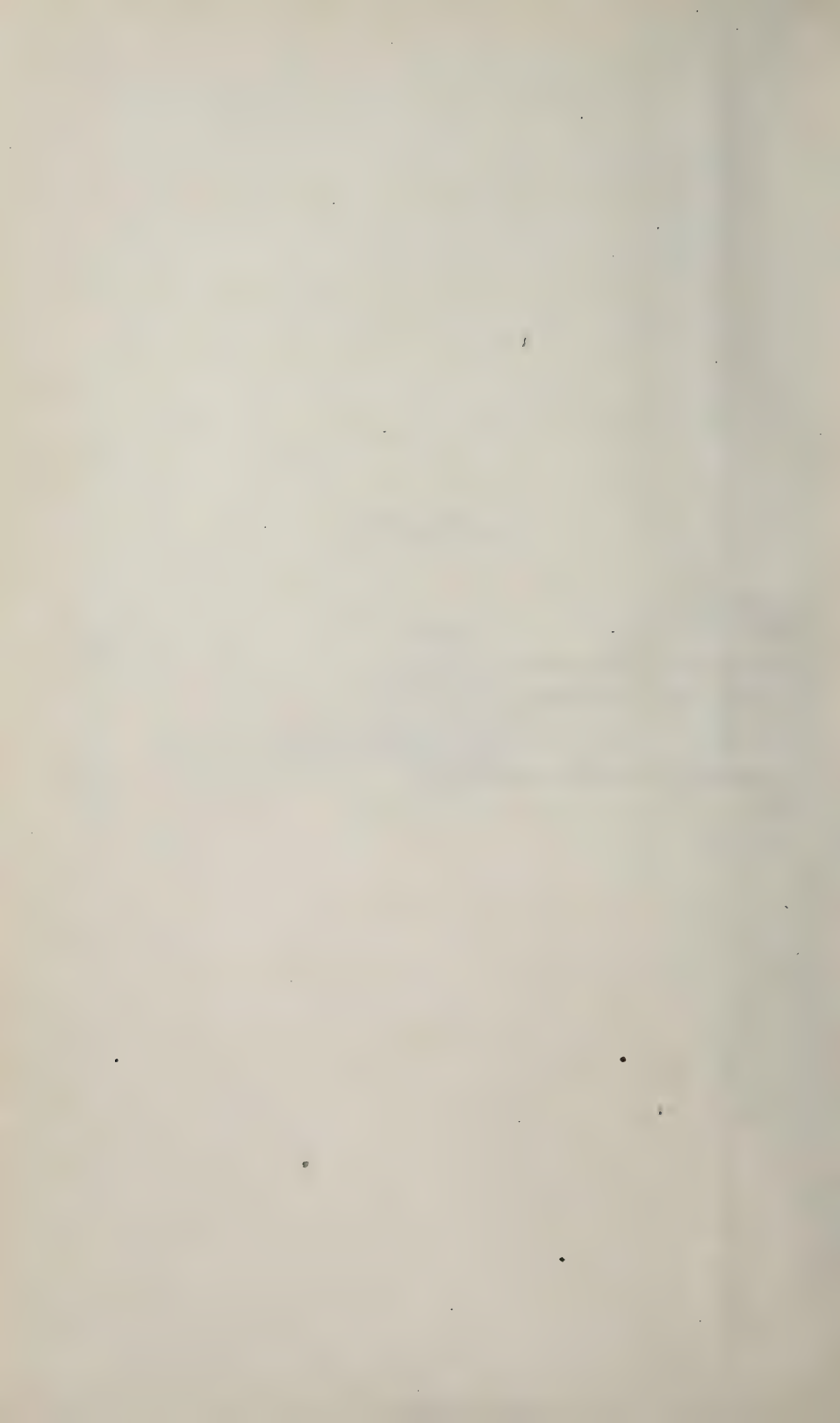
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# INTERSTATE COMMERCE COMMISSION.

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JOHN H. MARBLE, Secretary.





# INTERSTATE COMMERCE COMMISSION REPORTS.

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No. 4199.

## IN THE MATTER OF PIPE LINES.

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*Submitted May 10, 1912. Decided June 3, 1912.*

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1. The act to regulate commerce impresses the obligations of a common carrier upon a pipe line engaged in the transportation of oil in interstate commerce, even though such pipe line was built over its privately acquired right of way, and transports only its own oil.
2. Such traffic is not divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes, and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipes of that corporation at the state line.
3. Effect of a Kansas statute as to making pipe lines common carriers not considered, as the federal jurisdiction depends upon federal acts. If the federal act is ineffective, a similar statute of an individual state is of no avail.
4. The utilization by a pipe line of the right of way of a common-carrier railroad does not impress upon that pipe line the obligations of a common carrier.
5. A pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right of way purposes.
6. The transportation by the New York Transit Company in New Jersey and by the National Transit Company in New Jersey and Maryland, prior to November 1, 1905, was transportation by these corporations as common carriers.
7. The transfer by a common-carrier pipe line to a private corporation of a portion of its property theretofore used in its common-carrier operations, but not located in the state wherein it was incorporated as a common carrier, does not release that property from the obligations of a common carrier.
8. Certain pipe-line companies ordered to file with this Commission schedules of their rates and charges.

*S. H. Smith and A. G. Gutheim* for Interstate Commerce Commission.

*Pillsbury, Madison & Sutro* for Standard Oil Company.

*Loeb & Loeb* for Puente Oil Company.

*L. W. Andrews and T. O. Toland* for Union Oil Company.

*Edmund Tauszky* for Associated Oil Company and Associated Pipe Line Company.

*J. L. Autry and A. L. Beaty* for Texas Company.

*Greer & Minor* for Corsicana Refining Company and others.

*F. C. Proctor* and *J. B. Diggs* for Gulf Pipe Line Company and others.

*W. S. Fitzpatrick* for Prairie Gas & Oil Company and others.

*C. L. Wallis* for Higgins Oil & Fuel Company.

*F. A. Parsons* for Kansas Cooperative Refining Company.

*Martin Carey* for Standard Oil Company of New Jersey.

*C. O. Swain* for Standard Oil Company of New Jersey and Louisiana.

*J. G. Milburn* and *F. L. Crawford* for Buckeye Pipe Line Company and others.

*G. C. Greer* for Magnolia Petroleum Company.

*C. D. Chamberlain* for Emery Pipe Line Company and others.

*W. I. Lewis* for Tide Water Pipe Company, Limited.

*Eugene Mackey* for Producers & Refiners' Oil Company, Limited, and others.

*Albert L. Wilson* for Uncle Sam Oil Company and Uncle Sam Oil Company of Kansas.

#### REPORT OF THE COMMISSION.

##### LANE, Commissioner:

This is a proceeding instituted by the Commission upon its own initiative. The hearings held in various parts of the country developed certain facts which made it advisable that before continuing to a conclusion of the investigation certain questions of law should be argued before the Commission. Accordingly, upon the record made, seven questions were formulated and presented to the pipeline companies, into whose operations the investigation had been made. These questions go to the power of the Commission to regulate the rates, rules, and practices of these pipe lines as common carriers. These questions may be summarized into the one interrogatory: Have these pipe lines been placed under the jurisdiction of this Commission as common carriers? We shall proceed to a consideration of the questions propounded.

#### QUESTION NO. 1.

Does the act to regulate commerce impress the obligations of a common carrier upon a pipe line engaged in the transportation of oil in interstate commerce, even though such pipe line was built over its privately acquired right of way, and (by pursuing a policy of refusing to receive oil into its pipes except as the purchaser of such oil) transports only its own oil?

[See section 1 of the act to regulate commerce as amended June 29, 1906, and consult the record as to the policy of the Texas Company, the Gulf Pipe Line Company, the Ohio Oil Company, and other respondents.]

Section 1 of the act to regulate commerce was amended in 1906 so as to read:

That the provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, \* \* \* from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this act.

The record discloses that the Prairie Oil & Gas Company, the Ohio Oil Company, and other of the pipe-line respondents, have never held themselves out to the world as common carriers, but have made it their business to buy oil at the producing well and transport it by means of their own pipe lines across the state lines and sell it within the other states. They claim to be dealers in oil who use their pipe lines solely to convey their own property from state to state.

Upon these facts the question is raised as to whether the provisions of the section of the act above quoted are applicable to such carriage. Two constructions are given to this statute. It is urged, in the first place, that Congress does not possess the power to require that pipe lines shall not engage in interstate transportation of oil excepting as common carriers, and that an interpretation should be given to the language of the act that would be consonant with the constitutional limitation placed upon Congress. Therefore, it is said that we should seek for a construction that would not make the statute repugnant to the constitution. A safe construction, accordingly, would be one which made the act to read as if written, "All pipe lines transporting oil between the States as common carriers shall become subject to the provisions of the act to regulate commerce." In short, that Congress did not intend to bring under the jurisdiction of the act any pipe lines other than those which hold themselves out as common carriers and that to give another and different interpretation to the act is to accuse Congress of attempting to exercise a power that it does not possess, namely, the power to transform a private carrier into a public carrier by a statutory declaration.

We shall not consider the constitutional question here involved. If there was doubt in our minds as to the purpose of Congress, it would be proper to resolve that doubt upon the side of constitutional safety, but it seems quite manifest to us, from the history of this amendment to the act and from its language, that Congress intended to convert the interstate oil pipe lines of the country into common carriers. Whether Congress could lawfully so act is a matter for the courts judicially to decide. The Interstate Commerce Commis-



sion is an administrative body which may not presume to annul by interpretation an act of the federal legislature. So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it may be conceded that Congress could not impose upon a private pipe line the duties and responsibilities of a common carrier, it is not clear but that the provisions of this act could be upheld upon the ground that Congress was establishing a condition to which any pipe line company must conform which transported oil across a state border.

This seems to be the plain meaning of the act, that all pipe lines carrying oil from one state to another state, no matter what their previous status, should be thenceforward considered and deemed to be common carriers. And, to uphold this construction, reference may be made to the history of this provision.

Pipe lines as facilities of interstate commerce were not included in the bill introduced in the Fifty-ninth Congress, first session, which became the basis of the 1906 revision of the act to regulate commerce. Nor, indeed, had such carriers been mentioned in the public hearings held before the Senate Committee on Interstate Commerce during 1905. It was not until May 4, 1906, when the bill had for several months been before Congress, that pipe lines were injected into it. On that date Senator Lodge, of Massachusetts, offered an amendment whereby pipe lines, engaged in the transportation of oil or other commodity, except natural gas or water for municipal purposes, were included in the act.

It is proper to observe that Senator Lodge's modified amendment was offered only a few moments after the receipt by the Senate of the special message from the President transmitting the summary of the report by the Commissioner of the Bureau of Corporations in the Department of Commerce and Labor, on the subject of transportation and freight rates in connection with the oil industry—a report of an investigation undertaken in accordance with a House resolution. This summary and the Commissioner of Corporations complete report, which latter was transmitted to the Senate on May 17, 1906, contained an extended recital of the conditions against which the Lodge amendment was aimed.

During the discussion following the introduction of the amendment, it was suggested that it be limited by placing therein words which would make it applicable only to such pipe lines as "carry for the public." This was objected to by Senators Lodge and Nelson, who stated that the adoption of such language would practically nullify the provision, "because every one of these pipe lines can say, 'We refuse to do business for the public.'" There then followed considerable debate and some further modifications of the amendment, immaterial in this proceeding, were made. Finally, on May 4,

the same day it was offered, the amendment passed the Senate, making the law applicable to "any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water."

Later there was some further discussion of this amendment, principally concerned with its effect when read in connection with the Elkins amendment, now known as the commodities clause. At this time there was again raised the question whether the Lodge amendment was intended to and did place all pipe lines, whether or not carrying for the public, under the law. It was argued that unless the pipe lines enjoyed and exercised the right of eminent domain, or transported for hire, or perhaps both, Congress could not declare them to be common carriers in interstate commerce, and various limitations of the Lodge amendment were proposed accordingly. Senator Lodge answered that by inserting the words "transportation for hire" or "transportation for the public," and thereby limiting its applicability to pipe lines engaged in such transportation, his amendment would be absolutely destroyed. In explanation, he said that the practice of the pipe lines of buying oil at the well was the reason why such words would nullify his amendment, and he added that these pipe lines were ordinary common carriers when they chose to be. The amendment was not changed.

But the action of the Senate upon the return of the bill from the second conference leaves no room whatever to doubt that the Lodge amendment was intended to make common carriers of all pipe lines engaged in the interstate transportation of oil or other commodity, except water and except natural or artificial gas. The bill, as returned from the first conference, showed the Lodge amendment stricken from the first paragraph of section one and added to the so-called Bailey amendment, which is now the first sentence of the second paragraph of section one. When the bill came back from the second conference, the pipe-line provision had been removed from the Bailey amendment and thrown back into the opening sentence of section one. Senator Tillman, in charge of the bill, expressed some doubt as to whether this arrangement made it clear that the amendment was to cover *all* pipe lines. Thereupon a discussion arose similar to that which had engaged the attention of the Senate before. The record of this debate shows plainly that it was the opinion of the Senators that the Lodge amendment, arranged as originally proposed by Senator Lodge, in the first paragraph of section one of the act, was sufficient to accomplish the purpose and intent of the Senate and to place *all* pipe lines as described in the amendment under the law and within the jurisdiction of the Commission.



Before the bill was finally passed, the Senators received numerous communications from parties connected with the petroleum industry protesting against what the communications usually termed the "oil amendment." This resulted in additional discussion of the subject, and the old question was again considered, with the same result, that is, that the intent of the Senate was that all interstate pipe lines described in the amendment should be henceforth regarded as common carriers. Throughout the discussion there is abundant evidence that Congress passed this act for the purpose of subjecting all interstate pipe lines carrying oil to federal regulation, and took this action consciously, in the presence of the very constitutional question now raised as to its power.

The answer to Question No. 1 will be in the affirmative.

#### QUESTION NO. 2.

Assuming Question No. 1 to be answered affirmatively, is such traffic divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes, and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipes of that corporation at the state line?

[See record as to Oklahoma Pipe Line Company, Prairie Oil & Gas Company, and Standard Oil Company of Louisiana.]

Oil from Oklahoma points is transported by the Oklahoma Pipe Line Company, a corporation common carrier of the state of Oklahoma, for the Prairie Oil & Gas Company as a shipper, to McCurtain on the Oklahoma-Arkansas state line. There it is said to be delivered to the Prairie Oil & Gas Company, which transports it through its own pipe line across the southwestern corner of Arkansas, to Ida, on the Arkansas-Louisiana state line, where delivery is said to be made to the Standard Oil Company of Louisiana. This latter company owns a pipe line from Ida to Baton Rouge, La., and through it transports the oil to its refinery at Baton Rouge, and it is there refined.

It is not denied that the oil when it leaves the Oklahoma points is at that time destined for storage in Louisiana and for ultimate delivery at Baton Rouge, La. At McCurtain, on the Oklahoma-Arkansas state line, possession passes from a common carrier to the owner's so-called private carrier. It also appears that title passes to the Standard Oil Company of Louisiana at the point called Ida within the state of Louisiana, and the transportation beyond to Baton Rouge is by that company as the owner of the oil through its private pipe line.

It may be first pointed out that the change of title, breakage of bulk, stoppage in transit, or whatever it may be that happens at these state-line points, is not made in good faith for some necessary purpose. Therefore, when it is claimed that such an operation is



not interstate in character, this claim is made in violation of the letter and spirit of section 7 of the act, which reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

And, in this connection, it may be well to recall the language of the Supreme Court of the United States in a recent decision, *Dozier v. Alabama*, 218 U. S., 124:

What is commerce among the states is a question depending upon broader considerations than the existence of a technically binding contract, or the time and place where the title passed.

Further than this, it may be added that this state to state arrangement does not meet the Supreme Court test of state traffic. For after arrival of the oil at the state line, the owner does not "there and then for the first time and independently of any existing arrangement" with the pipe lines that had transported the oil thither, arrange for the transportation beyond. This is the test in the *Social Circle* case. *C. N. O. & T. P. Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 184, 192. See, also, *G. C. & S. F. Ry. Co. v. Texas*, 204 U. S., 414.

But, beyond any argument of the law, it may be said that the facts which this question presumes do not exist. This state-to-state operation from Oklahoma to Baton Rouge, La., and likewise the New Jersey and Maryland operations of the Standard Oil Company of New Jersey (hereinafter discussed under Questions 6 and 7), are supposedly accomplished by the location of pumping stations, or relay stations *upon the state lines*. Consider a line in its geometrical capacity, possessing only length, but neither breadth nor thickness, and contemplate the absurdity of such a line being the location of a pumping station, with its equipment of engines, boilers, tanks, and accessories. Moreover, the record shows that these locations on the state lines exist only in the intent of the pipe-line companies—in fact, they are generally several hundred feet away from the line.

Our conclusion is that the traffic referred to is not divested of its interstate character by the devices shown in the record.

### QUESTION NO. 3.

If a pipe line for the transportation of crude oil is built upon its privately acquired right of way, by a private corporation holding a charter subject to amendment or

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repeal, and the state wherein it was incorporated and wherein its pipe line is laid, later passes legislation declaring all such pipe lines to be common carriers, does such a pipe line, built before the enactment of such legislation, thereby become impressed with the obligations of a common carrier?

[See record as to Prairie Oil & Gas Company.]

The Prairie Oil & Gas Company was incorporated under the laws of the state of Kansas in 1900, among its charter powers being the power to build and operate pipe lines. The constitution of the state of Kansas (art. 12, corporations, sec. 210, corporate powers; sec. 1) provides that—

The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.

In 1905 the Kansas legislature passed a law providing that—

All pipe lines laid, built, or maintained within the state of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this act provided.

No necessity exists for the consideration of the effect of this Kansas statute. The federal jurisdiction depends upon federal acts. If the federal act is ineffective, surely a similar statute of an individual state is of no avail.

#### QUESTION NO. 4.

Does the utilization by a pipe line of the right of way of a common-carrier railroad impress upon that pipe line the obligations of a common carrier?

[See record as to Prairie Oil & Gas Company and Ohio Oil Company.]

The pipe line of the Prairie Oil & Gas Company is built for some three hundred miles upon the right of way of common-carrier railroads, among them the Missouri Pacific and the Atchison, Topeka & Santa Fe, the right so to build having been obtained from the carriers. This, however, is not the only instance of pipe lines so built. The lines of the Ohio Oil Company run for some distance—though perhaps not more than ten miles in all—over the right of way of the Vandalia and other railroads. It also appears from the exhibits in the record that about thirty-four miles of the Standard Oil Company of New Jersey's line from Unionville, N. J., to Bayonne, N. J., and about twelve miles of that company's line from Centerbridge, Pa., to Bayway, N. J., are located on railroad right of way.

While some doubt may exist as to the right by which pipe lines build upon railroad right of way, the mere fact that they are so built does not impress them with common-carrier obligations. This is so because the question whether a facility is a public facility does not depend upon whether it exercises the right of eminent domain. Furthermore, in this question of federal regulation the nature of the title to right of way is not controlling.

This question must be answered negatively.



## QUESTION NO. 5.

Does the utilization by a pipe line of a highway acquired for or dedicated to the public use impress upon that pipe line the obligations of a common carrier?

[See record generally, and particularly as to Tidewater Pipe Company.]

The practice of building pipe lines across and along public highways has been shown several times in the course of the proceedings. It appears that the usual policy of the lines is to deal with the owner of the abutting property in acquiring such highway rights upon the theory that such abutting owners own also the fee in the highway, and that the public right therein is a mere easement of passage. That this is the general rule of law there can be no doubt, and the few exceptions occur in states where the question here at issue is unlikely to arise.

We are of the opinion that a pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right of way purposes.

## QUESTION NO. 6.

Assume that throughout a series of years prior to November 1, 1905, the pipe lines of the New York Transit Company in the state of New Jersey, and the pipe lines of the National Transit Company in the states of New Jersey and Maryland, engaged in the transportation of crude oil for the Standard Oil Company of New Jersey, the Seep Agency and others, and that the New York Transit Company was a common carrier by pipe line incorporated under the laws of the state of New York, and that the National Transit Company was a common carrier by pipe line incorporated under the laws of the state of Pennsylvania, was such transportation by these lines in New Jersey and in Maryland transportation by them as common carriers?

[See record as to New York Transit Company and National Transit Company.]

It is clear that these lines entered New Jersey and Maryland in their corporate capacities and equally clear that their operations in these two states were part and parcel of their New York and Pennsylvania operations. The "delivery stations" at the state lines were not then in existence. Certainly the operations in New York and Pennsylvania were then, as they are now, common-carrier operations. These conditions sufficed to make them common carriers in New Jersey and in Maryland. See *McCluer v. M. & L. R. R. Co.*, 13 Gray (Mass.), 124. It is immaterial that the patrons of the lines were few in number. The fact remains that these corporations held themselves out to carry through to their Bayonne, Bayway, and Baltimore destinations, and in fact did so carry for such as offered goods for transportation. They were, therefore, common carriers in New Jersey and Maryland within the usually accepted definition of "one who undertakes for hire to transport the goods of such as choose to employ him, from place to place."

Nor does the fact that these lines in New Jersey and Maryland did not exercise the right of eminent domain take them out of the



common-carrier class. It is not the rule that because they exercise the right of eminent domain they shall be held to be common carriers, but rather that because they are common carriers they may be granted the right of eminent domain.

We hold that the transportation by the New York Transit Company in New Jersey and by the National Transit Company in New Jersey and Maryland, prior to November 1, 1905, was transportation by these corporations as common carriers.

QUESTION NO. 7.

Does the transfer by a common-carrier pipe line to a private corporation of a portion of its property theretofore used in its common-carrier operations, but not located in the state wherein it was incorporated as a common carrier, release that property from the obligations of a common carrier?

[See record as to Standard Oil Company of New Jersey, New York Transit Company, and National Transit Company.]

On November 1, 1905, the Standard Oil Company of New Jersey purchased from the New York Transit Company all the latter corporation's pipe-line property in New Jersey, and likewise purchased from the National Transit Company all of that corporation's pipe-line property in New Jersey and Maryland. Prior to November 1, 1905, as has been shown in the discussion of question No. 6, the New York Transit Company acted as a common carrier by pipe line in New Jersey, and the National Transit Company so acted in New Jersey and Maryland. Beginning with November 1, 1905, these New Jersey and Maryland pipe lines were operated by the Standard Oil Company of New Jersey as its private property, and the operations of the New York Transit Company thereafter ceased where its line crossed the New York-New Jersey state line at Unionville, N. Y., while the operations of the National Transit Company ceased at Centerbridge, Pa., on the Pennsylvania-New Jersey state line, and at Fawn Grove, Pa., on the Pennsylvania-Maryland state line.

There is a line of authorities which permits a common carrier to abandon operations which can not be profitably conducted, but no element of abandonment exists in this question. These New Jersey and Maryland lines, after November 1, 1905, handled the same flow of interstate commerce which had passed through them before that date.

The facts in the case show rather an arrangement whereby a common carrier divested itself of its terminals and turned them over to its principal patron for that patron's sole use. And the entire and complete failure of the government and of this Commission to obtain any reason for this transfer of property on November 1, 1905, fairly warrants the inference that it was done in anticipation of legislation which was enacted in June, 1906, and which was foreshadowed by the

activities of a departmental bureau which was then and for some time had been investigating conditions in the petroleum industry in response to a Congressional resolution.

The seventh question must be answered negatively.

In accordance with these conclusions, an order will be entered against the Oklahoma Pipe Line Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company, Limited, Producers & Refiners Oil Company, Limited, United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas, that they file with this Commission on or before September 1, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce.



No. 4406.

ESCANABA BUSINESS MEN'S ASSOCIATION ET AL.

v.

ANN ARBOR RAILROAD COMPANY ET AL.



No. 4406 (Sub-No. 1).

ESCANABA BUSINESS MEN'S ASSOCIATION

v.

ESCANABA & LAKE SUPERIOR RAILROAD COMPANY ET AL.



No. 4661.

SAME

v.

ANN ARBOR RAILROAD COMPANY ET AL.



*Submitted May 9, 1912. Decided June 3, 1912.*



Escanaba, Mich., is not reached by break-bulk boats or by car ferry. On complaint that rates to Escanaba from trunk line and central freight association territories are unreasonable and discriminatory; *Held*, That the evidence adduced does not warrant finding the rates unreasonable, and the absence of water service to Escanaba produces circumstances and conditions dissimilar from those which obtain at points so served.

*G. M. Stephen* and *S. J. Bolton* for complainants.

*C. C. Wright*, *E. M. Hyzer*, *A. H. Lossow*, and *H. W. Beyers* for Chicago & North Western Railway Company.

*D. L. Gray* for Erie Railroad Company.

*James Stillwell* and *A. P. Burgwin* for Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Vandalia Railroad Company; Grand Rapids & Indiana Railway Company; and Pennsylvania Railroad Company.

*Ernest S. Ballard* and *Clyde Brown* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; Michigan Central Railroad Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Pennsylvania Railroad Company; Long Island Railroad Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Northern Ohio Railroad Company; Northern Central Railway Company; Philadelphia, Baltimore & Washington Railroad Company; West Jersey & Seashore Railroad Company; Cumberland Valley Railroad Company; and New York, Philadelphia & Norfolk Railroad Company.

*D. P. Connell* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Northern Ohio Railway Company; Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; Chicago, Indiana & Southern Railroad Company; Dunkirk, Allegheny Valley & Pittsburgh Railroad Company; Pittsburgh & Lake Erie Railroad Company; Toledo & Ohio Central Railway Company; and Zanesville & Western Railway Company.

*J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company.

*James Cameron* for Grand Trunk Railway system.

*A. P. Humburg* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

##### CLARK, *Commissioner*:

Escanaba, Mich., a city of about 14,000 inhabitants, is located at the northern extremity of Lake Michigan on the western shore of Green Bay, 63 miles north of Menominee, Mich., and 115 miles north of Green Bay, Wis. It is served directly by the Chicago & North Western Railway and the Escanaba & Lake Superior Railroad.

Rates are stated in cents per 100 pounds and when given in groups of six are applicable on the six classes, respectively. "All-rail" means a movement entirely by rail. "Lake-and-rail" means a movement partly by rail and partly by lake boats, which involves break of bulk.



"Rail-lake-and-rail" means a movement by rail to the lake, by boat to another lake port and from thence by rail, which involves breaking bulk twice. "Across-lake" means a movement by rail to the lake and across the lake by car ferry without break of bulk. "Across-lake-and-rail" means a movement by rail and car ferry to the western lake port and from thence by rail, which may or may not involve breaking bulk.

The rates in issue are on classes and commodities, carloads, from trunk line and central freight association territories to Escanaba. No. 4406 and Sub-No. 1 involve all-rail, across-lake, and rail-lake-and-rail rates from trunk line territory. In No. 4661 all-rail, across-lake, and rail-lake-and-rail rates from central freight association territory are attacked. It is alleged that the rates are unreasonable, unjustly discriminatory and unduly prejudicial. Reparation is asked.

The all-rail first-class rate from New York to Chicago is 75 cents. This rate applies across-lake to Lake Michigan ports, such as Sheboygan, Manitowoc, Port Washington, and Kewaunee. Menominee, being located on Green Bay, is not considered a Lake Michigan port, but is given the same basis across-lake. All except Sheboygan and Port Washington are served by car ferries across the lake from Muskegon, Ludington, Frankfort, etc. The car ferry from Frankfort to Menominee passes through the Sturgeon Bay Ship Canal into Green Bay and across to Menominee.

A Baltimore & Ohio tariff in which the Chicago & North Western concurred provided for the application of the New York-Chicago basis to Menominee via car ferry to Manitowoc and thence by rail via the North Western to Menominee during the winter when the car ferry could not operate to Menominee. This application of rates was not provided for in either the Ann Arbor or Pere Marquette tariffs, both of which named rates from the same territories to the same points, and in both of which the North Western concurred. Upon discovery of this situation it was corrected by cancellation and the discrimination has thus been removed.

The rail-and-lake rate from New York to Chicago is 62 cents, first class, which also applies to Milwaukee and Manitowoc, Wis., and Gladstone. The Lake Michigan ports rail-and-lake rate of 62 cents applies to Gladstone as a proportional rate applicable on business for beyond. For local delivery the rate is 67 cents. The rail-lake-and-rail rate to certain points on the Soo Line from Rapid River to Sault Ste. Marie, Mich., ranging in distance from 6 to 151 miles from the port of Gladstone, is 65 cents first class, including wharf and dockage charges. There are no joint through all-rail rates from trunk line territory to Menominee, and the Chicago basis rail-and-lake is not applicable thereto.

The first-class rate from New York to Escanaba is \$1.15, the same as the all-rail rate to St. Paul, Minneapolis, and Gladstone. It applies to Escanaba all-rail, or across-lake-and-rail, via Milwaukee, Manitowoc, or Kewaunee, Wis.

Escanaba is not reached by either car ferry or break-bulk boats. Several years ago the Mutual Transit Company, whose boats pass near to Escanaba on the way to Gladstone, made it a port of call. The Goodrich Transit line boats also stopped there. Both services have been discontinued. There is nothing in the record really explaining the reasons for the withdrawal of the boat service and nothing to indicate why it has not been resumed. There are vague statements to the effect that the present condition is due to influence of the carriers, but however that may be there is no regular package-boat service to Escanaba. Complainants offered to give the Mutual Transit Company practically all their business as an incentive for it to stop boats at Escanaba, but the offer was not accepted. Escanaba rates, rail-lake-and-rail via Gladstone, the Soo Line, and the Escanaba & Lake Superior, are certain arbitraries above the Gladstone basis, giving it a first-class rate of 73 cents.

Escanaba dealers compete with dealers at Chicago, Milwaukee, Green Bay, and Menominee. The competition most felt is that of Menominee. Complainants attack class and commodity rates, but the only specific testimony submitted was in reference to manufactured iron and steel articles, such as shelf hardware from New England; nails, wire, and iron pipe from the Pittsburgh district; sugar and bottled ale from New York; canned goods from Baltimore; glass flasks from Dunkirk, Ind.; and whisky from New York, Baltimore, Cincinnati, and Pittsburgh.

Although the initial complainant was organized to better business conditions, bring in outside industries, and develop the natural resources of the upper peninsula of Michigan, it has been unable, allegedly on account of the present adjustment of freight rates, to secure the location of manufactories at Escanaba. Jobbers and manufacturers at Escanaba have increased the amount of their business in the last few years, but since the withdrawal of the boat service that increase has not been proportionately as great as at Menominee.

The testimony is mainly directed to the point that, in comparison with Menominee, Escanaba is at a disadvantage. The outbound or distributing less-than-carload rates for equal distances from Menominee and Escanaba are practically the same and there is no complaint in respect to them, but it is alleged that Escanaba is unduly prejudiced to the extent of the difference between the all-rail or across-lake-and-rail rates from the east to Escanaba and the all-rail



and across-lake rates to Menominee. Many comparisons are given, but the amount of the alleged disadvantage is a mere matter of mathematical calculation.

During the period of open navigation Escanaba is able to secure commodities from the east via rail-lake-and-rail through Gladstone, but it is contended that in order to successfully compete with Menominee it is necessary to purchase goods in quantities during the summer months and store them through the period of closed navigation, whereas Menominee has the Chicago basis, either direct or via Manitowoc throughout the year. This situation has been changed by the cancellation of the New York-Chicago basis to Menominee via Manitowoc, hereinbefore noted.

To show Escanaba's commercial importance complainants present an exhibit showing incoming and outgoing tonnage, 1,158,307 and 5,828,323 tons, respectively. When it is seen that upward of 5,000,000 tons of the outgoing tonnage was ore, and that a great majority of the incoming tonnage was coal, lumber, and other commodities not affected by the rates complained of, the exhibit is pertinent only for the purpose for which it was offered.

Complainants contend that reasonable all-rail rates from trunk line territory should be on the basis of 120 per cent of the New York-Chicago rates, and across-lake 108 per cent of the same rates. It is alleged that as the average distance from New York to Milwaukee, a Chicago rate point, and a lake port, is 1,039 miles, and the average distance via the same routes from New York to Escanaba is 1,282 miles, the difference in distance of 23.39 per cent does not justify rates 53.4 per cent higher. This contention seems to disregard the competitive conditions at Chicago and Milwaukee; in fact, to disregard everything except distance. So far as the rail-lake-and-rail rates are concerned, complainants contend that inasmuch as the 65-cent rail-lake-and-rail rate from trunk line territory is applicable to points on the Soo line farther distant from Gladstone than is Escanaba, that that rate should be applied to Escanaba. The adjustment sought would give Escanaba the following rates, first class: All-rail, 90 cents; across-lake-and-rail, 81 cents; rail-lake-and-rail, 65 cents.

The rates from New York through Manitowoc across-lake-and-rail to Green Bay, which is not reached direct by car ferry, are 81, 70, 54, 38, 32, and 27. Green Bay is 37.4 miles from Manitowoc. As before stated, Escanaba is 63 miles from Menominee, which has a car ferry direct. Comparing Escanaba's all-rail rates with the across-lake-and-rail rates to Green Bay, Escanaba is at a disadvantage of 34, 29, 22, 15, 14, and 11. The rail-and-lake rates to Green Bay are on a basis of 64.5, first class, while, as stated, the rail-lake-and-rail rates to Escanaba are on a basis of 73 cents, first class.



Using the all-rail rates from central freight association territory to Chicago as a basis, the all-rail rates to certain Wisconsin and Michigan points are made by adding the following arbitraries: 6, 5, 4, 3, 2, 2. For example, the rates to Chicago from Indianapolis being 31.5, 27, 21.5, 14, 11.5, and 9, the rates to Milwaukee are 37.5, 32, 25.5, 17, 13.5, and 11; to Kewaunee, Manitowoc, Port Washington, Sheboygan, and Two Rivers, Wis., 43.5, 37, 29, 20, 15.5 and 13; to Algoma, De Pere, Green Bay, Marinette, Oconto, Peshtigo, and Sturgeon Bay, Wis., and Menominee, Mich., 49.5, 42, 33, 23, 17.5, and 15. It will be seen that Milwaukee rates are made by adding the arbitraries to the Chicago all-rail rates, and that for each succeeding group beyond Milwaukee the arbitraries are added to the preceding group rates. The rates from Indianapolis across-lake to Escanaba are 75, 65, 48, 32, 26, and 23.5. Comparing the distances between the groups (for instance, Milwaukee is 85 miles beyond Chicago, and Escanaba is 63 miles north of Menominee) it is argued that Escanaba's present rates all-rail from Indianapolis should be made by adding the arbitraries to the Menominee rates and thus be reduced to 55.5, 47, 37, 26, 19½, and 17.

The rates from Pittsburgh across-lake to Escanaba are 79.5, 66.5, 49.5, 33, 28.5, and 25, and to Menominee are 47, 41, 32, 23, 20, and 17. Using the same arbitraries, Escanaba claims its rates should be 53, 46, 36, 26, 22, and 19.

The class rates from Buffalo, N. Y., via lake-and-rail to Escanaba are 46, 41, 33, 25, 21, and 18.5; from Cleveland, Ohio, they are 42, 37, 29, 22, 18, and 15½. From Buffalo to Gladstone and stations on the Soo line, Rapid River to Sault Ste. Marie, they are 38, 34, 27, 20, 17.5, and 15; and from Cleveland 34, 30, 23, 17, 14.5, and 12. These rates, it is alleged would be reasonable to Escanaba.

At the commencement of the hearing the North Western objected to the introduction of any evidence on the allegation of unjust discrimination on the grounds that there was nothing in the petitions warranting the charge and that the allegation was so vague it was impossible to meet it.

Defendants submitted no evidence, the statement being made at the close of complainants' case that practically all the defense defendants would have would be matter of argument drawn from the tariffs on file.

In the consideration of all-rail or across-lake rates to Escanaba, an examination of the comparisons submitted by complainants shows that invariably the all-rail rates to Escanaba are used and the across-lake rates to Menominee. If, on the other hand, the lake-and-rail rates to Escanaba via the port of Gladstone are compared with the across-lake rates to Menominee it will be observed that

Escanaba has the advantage of Menominee on the first and second classes; that the third class rates are the same, and that Menominee's fourth, fifth, and sixth class rates are lower by 3, 1, and 2 cents, respectively, than the rates to Escanaba. So far as Green Bay is concerned, the comparisons as between it and Escanaba are the across-lake rates to Green Bay and the all-rail or across-lake-and-rail rates to Escanaba.

Some of the questions presented as to rates from trunk line territory have been determined by the Commission. In *City of Ashland v. N. Y. C. & H. R. R. Co.*, 20 I. C. C., 3, complainant alleged that it was being subjected to unjust discrimination in that it was not given the Lake Superior port rate, 68 cents first class. The St. Paul basis rail-lake-and-rail, 83 cents first class, applicable to Ashland, was attacked. In 1896 the Western Transit and the Erie & Western Transportation companies discontinued their boat service to Ashland. The Commission held that the act has invested the Commission with no authority to compel lake lines to run their boats to Ashland, and that:

If the defendants' right to operate their boats to Duluth and to refuse to operate them to Ashland is, as we believe, unrestricted by the act here invoked, it follows that they may lawfully exact higher rates to Ashland than to Duluth as compensation for the additional rail haul to the former point.

In *Green Bay Business Men's Asso. v. B. & O. R. R. Co.*, 15 I. C. C., 59, the complaint was of unjust discrimination against Green Bay as compared with Menominee. In 1906 a line of steamers which had plied between Buffalo and Green Bay discontinued its service. The rates to Green Bay then were, and now are, on the basis of 81 cents first class across-lake-and-rail; the across-lake rate to Menominee was 75 cents first class. The Commission held that, in view of the peculiar situation of Menominee, approximately opposite the Sturgeon Bay Ship Canal, and Green Bay having a deep-water rate of 64½ cents, that the Green Bay rate across-lake-and-rail might reasonably be higher than the Chicago scale.

In *Commercial Club, etc., v. S. P. Co.*, 12 I. C. C., 495, Santa Barbara, Cal., sought terminal rates on westbound transcontinental shipments. We said:

Santa Barbara does not enjoy such water competition as to compel the installation of terminal rates voluntarily on the part of the rail carriers. By three distinct water routes, and at least as many lines of steamships, freight is transported from eastern ports to the Pacific coast; but competition between water and rail carriers does not directly, and of necessity, give Santa Barbara the advantageous rates which other ports have secured, for no steamship line carrying traffic from Atlantic ports, either by way of the Straits of Magellan, the Panama route, or the newly established Tehuantepec route, stops at Santa Barbara. \* \* \*

In the absence of any showing adverse to the reasonableness of the transcontinental westbound rates to Santa Barbara in and of themselves, we are constrained to deny complainant's petition. To hold that the Southern Pacific Company must as a matter of law grant to Santa Barbara a terminal rate because she lies upon the coast line would be in effect declaring that that city enjoys a harbor of a character which nature has not granted to her and transportation advantages which are not existent.

Complainants refer to the fact that prior to June, 1909, the rail-and-lake rate applicable from New York to Escanaba in connection with the New York & Hudson Steamboat Company was on the basis of 58 cents first class. This rate also applied to Menominee, and on the date above mentioned was reduced to 54½ cents, but on October 5, 1909, was canceled to both Menominee and Escanaba.

Defendants argue that inasmuch as Escanaba is not reached by a car ferry and is not served by break-bulk or package boats the circumstances and conditions of transportation to it are substantially different from those which obtain at Lake Michigan ports, and that in view of the above facts Escanaba is in effect an inland point. Complainants state:

On account of the Mutual Transit Company refusing to make Escanaba a port of call and the withdrawal of the Goodrich Transit Company from participation in through rates from trunk line territory to Escanaba, this community is left in the same situation as a town located inland, notwithstanding the fact that actually it is located on Lake Michigan. In other words, so far as transportation facilities are concerned, Escanaba might just as well be located 40 miles from the lake.

All of the points Rapid River to Sault Ste. Marie, Mich., are located on the Soo line. Two of them, Manistique and Sault Ste. Marie, are served by car ferry. They are on the Soo line and directly intermediate between Gladstone and Sault Ste. Marie. Escanaba is not on the Soo Line. The rail-lake-and-rail rates to Escanaba via the Mutual Transit Company and Gladstone are for Escanaba & Lake Superior Railroad delivery.

When the following table of rates is analyzed and considered in connection with the testimony that 60 to 65 per cent of the tonnage to Escanaba moves during the summer and that the all-rail or across-lake rates on sugar and canned goods to Escanaba are not used, the alleged disadvantage against Escanaba is materially narrowed.



Rates from side-line points to head-line points, in cents per 100 pounds.

AR=all-rail; XL=across-lake; RL=rail-and-lake, or rail-lake-and-rail.

From--	To Escanaba, Mich.			To Chicago, Ill.		To Milwaukee, Wis.			To Green Bay, Wis.			To Menominee, Mich.		
	AR	XL	RL	AR	RL	AR	XL	RL	AR	XL	RL	AR	XL	RL
Boston, Mass.:														
Hardware, n. o. s., l. c. l. . .	76	76	1 64	50	41	50	50	41	2 80	2 71	43	2 83	50	4 64½
New York, N. Y.:														
Ale, in glass, c. l. . . . .	46	46	31	30	25	30	30	25	2 42½	2 40	26	2 45	30	4 36½
Whisky, in glass, l. c. l. . .	115	115	1 73	75	62	75	75	62	2 110	2 100	64½	2 115	75	4 91
Whisky, in wood, l. c. l. . .	84	84	56	55	46	55	46	55	2 85	2 76	48	2 88	55	4 69½
Sugar, l. c. l. . . . .	61	61	1 42	40	33	40	40	33	2 56	2 53	35	2 60	40	4 47
Sugar, minimum 33,000 pounds, c. l. . . . .	6 33	6 33	6 23	6 26	6 23	6 26	6 26	6 23	6 33	6 28	6 24	6 33	6 26	6 30
Baltimore, Md.:														
Canned vegetables, l. c. l. .	58	58	1 36	38	30	38	38	30	2 54	2 51	32	2 58	38	4 44
Canned vegetables, minimum 36,000 pounds, c. l. . . . .	43	43	1 28	27	22	27	27	22	2 39½	2 37½	23	2 42	27	4 33½
Whisky, in glass, l. c. l. . .	107	107	1 65	67	54	67	67	54	2 102	2 93½	56½	2 107	67	4 83
Whisky, in wood, l. c. l. . .	77	77	1 49	48	39	48	48	39	2 78	2 69	41	2 81	48	4 62½
Pittsburgh, Pa.:														
Nails, iron, l. c. l. . . . .	42	33	1 33	21	21	23	22	23	39	26	26	42	23	23
Nails, iron, minimum 36,000 pounds, c. l. . . .	7 32	28½	1 25	18	18	20	19	20	6 29	22	22	7 32	20	20
Wire, n. o. s., iron, l. c. l. .	42	33	1 33	21	21	23	22	23	39	26	26	42	23	23
Wire, minimum 36,000 pounds, c. l. . . . .	7 32	28½	1 25	18	18	20	19	20	6 29	22	22	7 32	20	20
Whisky, in glass, l. c. l. . .	95	79½	1 65	45	45	47	45	47	89	53	53	95	47	47
Whisky, in wood, l. c. l. . .	67	56½	1 49	33	33	35	33	35	63	39	41	67	35	4 62½
Wheeling, W. Va.:														
Pipe, iron, minimum 30,000 pounds, c. l. . . .	7 32	28½	25	18	(*)	20	19	20	6 29	22	22	7 32	20	20
Cincinnati, Ohio:														
Whisky, in glass, l. c. l. . .	91	76	65	40	40	46	46	46	52	52	56½	52	46	4 83
Whisky, in wood, l. c. l. . .	64	55	49	29	29	33	33	33	37	37	41	37	33	4 62½
Dunkirk, Ind.:														
Glass bottles, l. c. l. . . . .	59	49	49	24	(*)	28	28	24	37	6 49	41	37	49	4 58½
Glass bottles, minimum 28,000 pounds, c. l. . . . .	9 28½	25	28	11½	(*)	13½	13½	12½	19	5 25½	23	19	25	4 33½

1 Gladstone, Mich., combination.  
 2 Milwaukee, Wis., combination.  
 3 Kewaunee, Wis., combination.  
 4 Green Bay, Wis., combination.  
 5 Manitowoc, Wis., combination.  
 6 Specific through commodity rate.

7 Specific through commodity rate subject to minimum 36,000 pounds east and west of Chicago junctions.  
 8 No rate via route shown.  
 9 Commodity rate subject to a minimum 28,000 pounds east of Chicago and 30,000 pounds west.

We have here three omnibus complaints involving class rates, and commodity rates on over 100 commodities from trunk line and central freight association territories via all-rail, across-lake, and rail-lake-and-rail. Sixty-three defendants are involved. Many comparisons of rates drawn from tariffs are presented, but specific testimony is offered in reference to only a few commodities. In *National Petroleum Asso. v. A. A. R. R. Co.*, 14 I. C. C., 272, the Commission enumerated some of the insuperable difficulties involved in such a complaint, stating:

The law authorizes and requires the Commission, when it shall be of opinion that any of the rates subject to its jurisdiction are unreasonable or otherwise unlawful, to determine and prescribe what will be the just and reasonable rates thereafter to be charged as maxima. It necessarily follows that the Commission should base its opinion upon facts and circumstances disclosed at the hearing, or otherwise entitled to consideration, of sufficient weight and force to appeal to the understanding and conscience of intelligent men, and the experience of the Commission as well as numerous deci-

sions of the courts have established precedents and standards by which the Commission ought to be guided and aided in reaching a just and reasonable conclusion.

Reference was made to the language used in *Dallas Freight Bureau v. M., K. & T. Ry. Co.*, 12 I. C. C., 427:

The case seems to have been thrown together as if the Commission needed only to have the opportunity presented to it to take favorable action.

In the instant cases defendants state:

The complaints in these cases contain very broad general allegations that the rates into Escanaba are unreasonable and unjustly discriminatory. These allegations are not, however, supported by any statements of fact, and it is submitted, for that reason, that the scope of the issues must be determined by the evidence introduced at the hearing.

Complainants refer to the fact that class rates from New York to Memphis are on the basis of \$1 first class for a distance of 1,245 miles, and argue that Memphis receives the benefit of its location on the Mississippi River, while Escanaba does not receive any benefit on account of its location on Green Bay. It would be going too far afield to recite the reasons for the adjustment of rates from New York to Memphis, which bear no relationship to the Escanaba rates.

In *Burnham-Hanna-Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, we found that the rates to St. Paul and Minneapolis are controlled by competition of water lines and Canadian rail lines, and that, therefore, they may reasonably be lower than to Missouri River cities. Complainants ask that the all-rail rates from New York to Escanaba shall be materially less than from New York to Kansas City via St. Louis, for approximately the same distance, disregarding the fact that Escanaba already has the advantage of the St. Paul-Minneapolis all-rail rates for about the same distance.

In *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 16 I. C. C., 56, we found that the rates applicable from the Mississippi River to the Missouri River as parts of the through rates on class-rate traffic from Indianapolis to the Missouri River should not exceed 55 cents, first class. The distance from Indianapolis to the Missouri River is 524 miles, and to Escanaba it is 531 miles. Complainants ask that rates from Indianapolis to Escanaba be established on the basis of 55½ cents, first class, when the local rate from Indianapolis to East St. Louis is 38 cents, first class, for a distance of 242 miles, making the rate from Indianapolis to Missouri River cities 93 cents. The first-class rate, all-rail, from Indianapolis to Escanaba is 81 cents; across-lake it is 75 cents.

We said in *Green Bay Business Men's Asso. v. B. & O. R. R. Co.*, *supra*:

If this question were presented to the Commission as an abstract proposition for the first time, we should find no ground for including Green Bay in 100-per-cent territory. The extension of that rate to any of these towns upon the west shore of Lake Michigan is a forced one.



The car-ferry lines make the rates and Escanaba lacks the compulsion of that facility. It possesses certain natural advantages inherent in its location, but they do not impel the furnishing of transportation facilities which Escanaba seeks and which inure to the benefit of its commercial rivals.

There is here no evidence on which we can find that any rate is inherently unreasonable.

Whether an attack upon an entire schedule of rates is well founded or not is to be determined largely by ascertaining whether the gross amount of traffic carried on those rates affords the carrier, above its operating expenses and taxes, a reasonable return upon the fair value of the property. *Frye & Bruhn v. N. P. Ry. Co.*, 13 I. C. C., 501.

Complainants' main interest is in the competitive situation as between Escanaba and Menominee. The real question is one of alleged discrimination. The allegation with respect to Chicago and Milwaukee answers itself. Green Bay has deep-water service and is approximately the same distance from Kewaunee and Manitowoc, both of which are served by car ferry. Its situation has already been covered in the *Green Bay case, supra*.

Sault Ste. Marie is a port of call for the Anchor line and 6 other lines of boats. Manistique, served by car ferry, is located on the Soo line intermediate between Gladstone and Sault Ste. Marie. Can we find that rates compelled by competition at Gladstone, Manistique, and Sault Ste. Marie are unduly prejudicial to Escanaba, which is not on the Soo Line?

If we took specific instances of Escanaba's disadvantage as compared with Menominee, we could only repeat the dissimilar circumstances and conditions at Escanaba and Menominee. Escanaba labors under disadvantages, not by reason of its location, not due to lack of natural advantages, but because it is not served by a car ferry or by boat lines against which an order of the Commission would properly lie.

The record discloses nothing on which we can reach a finding as to commodity rates. On the surface, the all-rail commodity rates to Escanaba may seem discriminatory as compared with Menominee's all-rail rates, when the across-lake and the across-lake-and-rail rates to both points are more nearly the same; but whether the discriminations are unjust is not determinable, because we search the record in vain for a ray of light on that question.

Complainants present a statement of rates from New York to various points not reached by car ferry direct. For instance, Port Washington and Sheboygan, 75 cents first class; Green Bay and De Pere, 81 cents; Oconto and Peshtigo, 86½ cents. As stated in the *Green Bay case, supra*, the first two are intermediate, Milwaukee to Manitowoc. De Pere is intermediate, Manitowoc to Green Bay. Oconto

24 I. C. C.



and Peshtigo are intermediate, Green Bay to Menominee. No higher rate can be maintained to the intermediate points. Escanaba is not intermediate between points which are served by car ferry and, as stated by complainants and defendants, is practically in the situation of being located inland. Were we to grant it the adjustment here sought, inland points would be justified in making the same demand.

On the record, from a diligent examination of tariffs and from our knowledge of rate conditions, we are unable to find that the rates challenged are unreasonable or that they subject Escanaba to discriminations which are unjust. The complaints will be dismissed.

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No. 4553.

KANSAS CITY, MO., AND KANSAS CITY, KANS.,

v.

KANSAS CITY VIADUCT & TERMINAL RAILWAY COMPANY ET AL.

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*Submitted May 9, 1912. Decided June 3, 1912.*

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Complainants seek an order requiring the establishment, or restoration, of routing for certain interstate electric passenger cars over a viaduct that is owned by a company that is not and never has been a carrier subject to the act; *Held*, That the Commission has no jurisdiction of the company owning the viaduct, and no power to order the present routing changed as prayed.

*John G. Park and Clyde Taylor for Kansas City, Mo.*

*R. J. Higgins for Kansas City, Kans.*

*William G. Holt for Kansas City Viaduct & Terminal Railway Company.*

*John H. Lucas for Metropolitan Street Railway Company and receivers thereof.*

*McCabe Moore for Kansas City Western Railway Company.*

#### REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Kansas City, Mo., and Kansas City, Kans., are municipal corporations located at the confluence of the Missouri and Kaw Rivers, and separated only by the state line. They bring this complaint to compel the defendants to establish a through route and joint rate between the two cities over the viaduct of the Kansas City Viaduct & Terminal Railway Company.

The Kansas City Viaduct & Terminal Railway Company is a corporation organized under the railroad act of the state of Missouri. It procured from each of the cities franchises reciting that the assent of the corporate authorities of the two cities was granted to the railroad company to construct and maintain a toll bridge over certain streets in said cities:

In consideration of the benefits that will ensue to the cities of Kansas City, Missouri, and Kansas City, Kansas, and the inhabitants thereof, by the construction, maintenance, and operation of an elevated railroad and highway viaduct running from near the business center of one city to near the business center of the other, recognizing the great saving of time for both travel and traffic that may be affected by the shortest possible lawful route; also how commerce between the cities may be facilitated and interchanged at the least possible cost of time and expenditure of effort; and to enhance as much as possible the easy, convenient, and rapid transportation of persons and property.

The bridge company was incorporated under the laws of the state of Missouri—

for the purpose of constructing, owning, leasing, controlling, maintaining, and operating a toll bridge or viaduct \* \* \* for the passage of wagons, vehicles, foot passengers and animals, and to charge reasonable rates of toll therefor, with the right to convey and transport persons and freight thereon by electricity or other mechanical power.

The railroad company's transfer of its franchise right to the bridge company was approved by ordinance of Kansas City, Mo.

The railroad company and the bridge company had, and exercised, the right of eminent domain. No business was done by the railroad company. The bridge company constructed the viaduct or bridge. It is composed of steel and concrete and extends from a point in Kansas City, Mo., over the bottom lands and the Kaw River to a point in Kansas City, Kans., a distance of 1.7 miles. It has an open roadway and, separated by a division railing, a double-track railway line for electric trolley cars. It is connected at each end with the tracks of the Metropolitan Street Railway Company, hereinafter styled the street railway company. There are no crossings or stops on the viaduct.

The bridge company has never engaged in the transportation of passengers or freight, and has no equipment or facilities therefor, except the viaduct and the railroad tracks thereon. On January 11, 1907, it filed with us a tariff of tolls which was stated to be in effect January 1, 1907. This included tolls for foot passengers, vehicles, animals, and machines and included an item, "street car, per passenger, 5 cents." Upon request for further compliance with our tariff regulations correspondence developed the fact that there was no traffic on the bridge excepting foot passengers, vehicles, animals, and machines, none of which are transported in such way as to subject them

to the provisions of our act, and the tariff was therefore canceled, effective May 1, 1912.

At the present time no railroad cars are operated over the viaduct, and it was stated on its behalf that the bridge company desires a tenant for its railway tracks.

The street railway company is a corporation organized under the laws of Missouri to conduct a street railway business. It controls the Kansas City Elevated Railway Company and the Central Electric Railway Company. It was testified that it has complied in every respect with the act. It transports passengers between the two cities. Since June 3, 1911, it has been in the hands of receivers.

The Kansas City Western Railway Company, hereinafter styled the Leavenworth line, owns and operates an interurban electric line between Kansas City, Kans., and Leavenworth, Kans. Under contract with the street railway company its cars are operated into Kansas City, Mo.

In 1907, under contract between the street railway company and the bridge company, certain cars of the street railway company were routed over the viaduct between Kansas City, Mo., and Kansas City, Kans. The contract provided that the street railway company should pay to the bridge company one cent per passenger.

In August, 1911, rentals due the bridge company from the street railway company being unpaid, the bridge company gave notice to the street railway company that if the rentals were not paid on or before August 10, 1911, the contract would be canceled. The street railway company ceased using the viaduct August 11, 1911. Before complaint was filed the cars that formerly passed over the viaduct were routed over a surface line between the two cities. In January, 1912, after the complaint was filed, they were routed over the structure of the Kansas City Elevated Railway Company, which is controlled by the street railway company and operated by the receivers thereof. Via this route the time is a few minutes longer than via the viaduct. The Leavenworth cars were also routed over that structure.

The street railway company and the bridge company deny that we have jurisdiction of the complaint. The position of the Leavenworth line is that if it has any right it is willing to receive it; or if it has any duties to perform, it is willing to perform them if the Commission can provide a way.

It is first necessary to determine the jurisdictional question. Complainants argue that the bridge company is subject to our jurisdiction under the provision of the law that "The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad"; and in that it is a public utility



which has obtained valuable franchises from complainants and is thereby subjected to governmental control, has exercised the power of eminent domain, has leased and is willing to lease its tracks, and has filed with us schedules of its tolls.

It is contended that we have jurisdiction over the street railway company and the Leavenworth line because they are engaged in the interstate transportation of passengers. *West End Imp. Club v. Omaha & C. B. Ry. & B. Co.*, 17 I. C. C., 239; *Omaha & C. B. Ry. & B. Co. v. Interstate Commerce Commission*, 191 Fed., 40; *Willson v. Rock Creek Ry. Co.*, 7 I. C. C., 83; and *C. & M. E. R. R. Co. v. I. C. R. R. Co.*, 13 I. C. C., 20.

Is the bridge company a common carrier subject to the act to regulate commerce?

In *Kentucky & I. Bridge Co. v. L. & N. Ry. Co.*, 37 Fed., 567, the circuit court held that:

Where a railway company, by contract with a bridge company, acquires the right to use a bridge with its approaches, for the engines, cars, and trains of the railway company, the first section of the "act to regulate commerce" regards the railway company as the owner or operator of the bridge and approaches, for the time being, as to all freight transported by the railway company over the bridge; and as to all such traffic the railway company, and not the bridge company, must be regarded as the common carrier. Such a bridge company is not, either in law or in fact, a common carrier of interstate traffic within the scope and meaning of said section, and it can not invoke the provisions of said act to compel railway companies to transact business with or through such bridge company. Between such a bridge company and the railway carriers of the country the act establishes no such reciprocal relations, duties, and obligations as require the latter to form business connections with the former.

In *Enterprise Transportation Co. v. P. R. R. Co.*, 12 I. C. C., 326, the Commission held that:

Bridges, ferries, switches, and terminal facilities are declared to be included within the term "railroad" not for the purpose of exempting them from any liability to publish and observe their rates when such ferries or bridges are operated by their owners as common carriers, but rather to make certain that where those agencies are employed by railroads the transportation service rendered by them shall still be subject to the provisions of the act to regulate commerce \* \* \*.

A railroad company may without doubt provide by contract with an independent company for the construction of a bridge or ferry to be used as a part of its line. It can perhaps extend its contract to the operation of the bridge or ferry by its owner when constructed, but in such case the bridge company or the ferry company is not a common carrier. The railroad is the carrier and answerable to the law as such.

A common carrier is one who holds himself out as ready to engage in transportation for hire as a public employment, and in general the liability of a carrier does not attach to one who does not so hold him-

self out. The bridge company in the instant case does not hold itself out to be a common carrier or a carrier of passengers and freight. No freight has ever been transported by rail across its structure and the passengers which were carried over it were transported in the cars and by the motive power of the street railway company. It has no motive power and no rolling stock. Its structure is not now, although it has been in the past, rented to or operated in connection with any railroad. Foot passengers, vehicles, and animals pass over the structure. They are interstate commerce, but not such as is subject to the provisions of the act to regulate commerce. The bridge company rents or is willing to rent its structure, but in our view it is not a common carrier subject to our act.

Clearly the street railway company is subject to our jurisdiction. But, inasmuch as we have no power to require the bridge company to obey any of the provisions of the act to regulate commerce, how can we exercise jurisdiction over the street railway company to the extent of requiring it to operate over the viaduct? How could we require the bridge company to grant to the street railway company the right to use the viaduct?

The present case is essentially different from the *Omaha & Council Bluffs case*, *supra*, in that there the defendant was a common carrier of interstate passengers.

In the establishment of a through route the power of the Commission is limited by the provision that it "shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character." The bridge company is neither a railroad, a water line, or a common carrier, and we have no jurisdiction over it.

In addition, the words "through route" contemplate an agreement, voluntary or under requirement of the Commission, of two or more carriers to provide a line made up of all or parts of their lines between certain points. In the instant case what the complainants ask is that we shall require the street railway to change the routing of its cars from the present route to that of the viaduct. In other words, it would not be the establishment of a through route, but a requirement that the route be changed, a plan of physical operation not within our power to require under the facts here shown.

As we have no jurisdiction in the premises it is unnecessary to consider further the facts or the merits of the controversy.

The complaint will be dismissed.

No. 4340.  
ALAN WOOD IRON & STEEL COMPANY  
*v.*  
PENNSYLVANIA RAILROAD COMPANY ET AL.

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*Submitted February 8, 1912. Decided June 3, 1912.*

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Complaint attacks certain features of the uniform demurrage code. Carriers have voluntarily eliminated the provision for separating cars under the average agreement into (a) box cars including refrigerator cars, and (b) freight cars of all other descriptions. That being the only change which, under this complaint, we would order, complaint dismissed.

*Clement B. Wood* for complainant.

*George Stuart Patterson* for Pennsylvania Railroad Company.

*William L. Kinter* for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

This is a companion proceeding to No. 4254, *Alan Wood Iron & Steel Co. v. P. R. R. Co.*, 22 I. C. C., 540. The method of operation at and physical characteristics of complainant's plant at Ivy Rock, Pa., will not, therefore, be repeated.

The attack here is upon certain provisions of the uniform demurrage code, which defendants have adopted, the allegation being that they are unreasonable and discriminatory. This code was not prepared by the carriers, but by a committee of the National Association of Railway Commissioners, composed of a representative of each state that has a railway commission and a member of the Interstate Commerce Commission. The code so reported was adopted by the National Association in convention and was approved, but not prescribed, by this Commission. The charge of discrimination is based on the fact that complainant uses industrial interchange tracks.

Complainant objects to:

1. The absence of an industrial rule. The proposed rule, which was submitted to the committee on car service and demurrage of the National Association of Railway Commissioners, was as follows:

When cars are interchanged with industrial plants performing their own switching service, handling cars for themselves or other parties, an allowance



of 24 hours will be made for switching in addition to the regular time allowed for loading and unloading. If cars are reloaded after being unloaded, an additional 48 hours' free time will be allowed.

2. Absence of provisions requiring notification to consignees having interchange tracks.

Under the rules constructive or actual delivery upon interchange tracks constitutes notice thereof to consignee. Notice to others must show point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car.

3. Under "Average agreement":

(a) Separation of cars into (1) box cars, including refrigerator cars; (2) freight cars of all other descriptions.

(b) Absence of provision for additional free time on account of weather interference and bunching.

Under the individual car plan of demurrage no charges are assessed: (1) When the condition of the weather during the prescribed free time makes it impossible to employ men or teams in loading or unloading, or to load or unload without serious injury to the freight; (2) when shipments are frozen so as to prevent unloading during the prescribed free time or when because of high water or snowdrifts it is impossible to get to cars for loading and unloading during that time; (3) when as the result of the act or neglect of any carrier cars for one consignee are bunched and delivered in accumulated numbers in excess of daily shipments. In these instances the free time is extended so that a consignee is accorded the same amount of free time he would have been entitled to but for those causes.

(c) Provision as to debits and credits.

The rules provide: "In no case shall more than one day's credit be allowed on any one car."

In view of complainant's statement that defendants are not charged with having violated the rules, defendants contend that the report of the committee on car service and demurrage, National Association of Railway Commissioners, conclusively refutes the contentions advanced by complainant.

#### INDUSTRIAL RULE.

Under demurrage rules previously in effect, besides the additional time allowed industrial plants performing their own switching, 24 hours' free time was allowed where pig iron or scrap was analyzed before unloading. In the new, or uniform rules the industrial rule was omitted. Where cars are placed at loading and unloading points by the carrier, the free time begins to run from the first 7 a. m.

after the cars are so placed. At industrial plants which do their own switching to and from interchange tracks the time begins to run from the first 7 a. m. following placement on interchange tracks, and continues until return thereto.

It is alleged that no objection was made at the public hearing in Washington in June, 1909, to the industrial rule contained in the draft of proposed rules and that only casual reference was made to it in the discussions. After reading what purported to be the recommendations which would be made by the committee to the convention of the National Association of Railway Commissioners, complainant wrote the chairman of the committee on November 12, 1909, requesting that shippers and railroads be given a public hearing before the rules became effective. The convention met November 16, 1909. Feeling that at the public hearing in June, 1909, all had been given every opportunity to submit their views, it was considered not only impracticable, but unnecessary to grant further hearing. Counsel for complainant was present at and participated in the proceedings before the committee and filed a brief on behalf of complainant.

Complainant contends that the only theory on which the elimination of the industrial rule can be supported is that transportation ceases at the interchange track. It is argued that interstate commerce commences and ends at the points of loading and unloading.

Complainant receives cars from and delivers them to the defendants on interchange tracks. Although each defendant classifies cars according to commodities, complainant, as a preliminary to switching loaded cars to unloading points, consolidates the classifications, weighs the cars, both loaded and empty, and analyzes pig iron and scrap. In view of these facts, complainant contends additional free time should be allowed.

The report of the committee on car service and demurrage, on page 221 of the proceedings of the twenty-first annual convention of the National Association of Railway Commissioners, accounts for the disappearance of the industrial rule. The gist of the report in this respect is that an allowance in the form of additional time is just as unlawful as one in the form of money. Complainant, however, submits that *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C., 246; and *Chicago & Alton Ry. Co. v. U. S.*, 212 U. S., 563, which were quoted by the committee in its report, do not touch on the illegality of the industrial rule. It is argued that section 15 of the act clearly recognizes the right of the carrier to give compensation to any person rendering any service, such as switching, although it apparently does not give the Commission the right to compel the



carrier to give such compensation. It is alleged that *Union Pacific R. R. v. Updike Grain Co.*, 222 U. S., 215, following *Diffenbaugh case*, 222 U. S., 42, recognize that services performed by the owner may be a part of the interstate transportation and carriage; that the switching between the tracks of the carrier and the loading and unloading points of the industry is a part of the interstate transportation, and it is proper for the demurrage rules to give additional time allowance for this part of the interstate transportation when performed by the industry and not by the carrier. Even conceding for the sake of argument that complainant may be reimbursed for the switching service it performs, and without passing upon the legality of such an allowance, does it follow that the reasonable compensation specified in the act shall be enlarged by additional free time? Does not this argument suggest that because it may be legal for the defendants to make a reasonable allowance to complainant they should discriminate in its favor? We are not prepared to direct additional time allowance to industrial plants.

#### NOTIFICATION.

In the committee report it was stated:

Placement of cars upon private or interchange tracks should be sufficient notice to the consignee equipped with these facilities, for the reason that such delivery is not made except in response to general or special orders.

It appears from the evidence that, in some instances, free time commences to run before the car can be removed from the interchange track. The contents of a box car can not be known without breaking the seal, and that has been held to constitute acceptance. Even as to open cars, it is possible only to see the contents and car number. It is the practice of some shippers to consign to complainant a car of some commodity, particularly scrap iron, without having received an order therefor, and, if same is accepted by an unwary consignee under the misapprehension that it was shipped under contract, to demand more than the market price. To protect against such fraud complainant claims it is entitled to notice containing the information now given consignees other than those receiving freight on interchange tracks. The complainant avers that the defendants are under legal obligation to furnish similar information; that until it is furnished delivery is not complete, and time should not begin to be computed. In some cases it takes three or four hours before the desired information can be obtained from the defendants, it being secured by telephone.

We think that defendants should give to complainant notice of arrival of cars loaded with scrap iron and of consignments in box



cars, stating point of shipment, car initials and number, and contents, and that under the average plan of demurrage free time on such cars should run from the first 7 a. m., after such notice is mailed, or is given verbally or by telephone, or from the first 7 a. m. after the car is placed upon interchange track if such placement is later than the giving of notice. We assume that this suggestion will be followed by defendants without the entry of an order with regard thereto.

AVVERAGE RULE: SEPARATION OF CARS INTO TWO CLASSES.

The report of the committee on car service, demurrage, and reciprocal demurrage to the twenty-third annual convention of the National Association of Railway Commissioners, in October, 1911, and which was adopted by the convention, contained the following:

From such information and facts as we have been able to obtain in the matter it appears to us that rule 9, the so-called average rule of the uniform code, would tend to promote even greater efficiency in car movements and would become even more equitable to all concerned than is now the case if it was so amended that the credits earned on any kind or class of freight cars could be used in offsetting debits accrued on any other kind or class of freight cars. For these reasons we recommend that subdivision "C" of said section 9 in the uniform code be either repealed or so amended that, for the purposes of this section, all the freight cars be placed in only one class. We wish to call the attention of the officers and members of the American Railway Association to this recommendation, and earnestly hope it will receive their serious consideration.

During a period of 15 months from June, 1910, to August, 1911, complainant paid \$1,002 demurrage. If the average rule had permitted the offsetting of credits which were earned on one class of equipment against debits accrued upon the other class, \$569 of this demurrage would not have accrued. In other words, with the exception of the months of July and December, 1910, and March, 1911, complainant had sufficient credits to offset the debits. In July, 1910, it handled via the lines of both defendants 625 cars other than box cars, and paid \$460 demurrage thereon. Had it been able to offset credits earned on box cars against the debits on other cars it still would have had assessable against it \$334. What the conditions were which brought about the peculiar situation in this month is not disclosed by the record. At any rate, but for the separation rule, during a period of 15 months complainant would have had only \$374 demurrage on approximately 25,000 cars handled. We cite this simply to show that the greater part of the demurrage which complainant paid accrued through the application of the subdivision of the average rule providing for the separation of cars into two classes. The argument is advanced that, generally speaking, it takes longer to unload box cars than freight cars of

other kinds. The situation disclosed by the record, however, is that with the exception of the three months mentioned, no demurrage against complainant accrued on the Pennsylvania on cars other than box cars; whereas, on the contrary, no demurrage accrued on the Reading on box cars. In other words, it would appear that complainant was not able to promptly unload box cars on the Pennsylvania, but was able to do so on the Reading.

Since this case was heard a committee of the American Railway Association, representing the carriers, and a committee from the National Industrial Traffic League, representing the shippers and consignees, have mutually agreed upon changes in the uniform code, eliminating objectionable features that developed from experiences thereunder. Among the changes so agreed upon is the elimination of the provision for separation of cars into two classes under the average rule. The action of these committees has been approved by the American Railway Association, and the uniform demurrage code as so amended has been approved, but not prescribed, by the Commission.

#### WEATHER INTERFERENCE AND BUNCHING.

No testimony was given as to the effect upon plants doing their own switching of the absence of a weather-interference rule from the average agreement. Instances of bunching were cited. One is illustrative: Fifty-eight cars of coke were shipped between December 20 and 31; 31 prior to December 24; and the remainder on and after that date. Thirty-one were delivered on January 2 and 23 on January 4; the remainder thereafter. Demurrage accrued. We only have the fact that the cars were delivered in accumulated numbers in excess of daily shipments, and no evidence as to whether or not that was a direct result of the act or neglect of carriers.

The committee on car service and demurrage reported:

We can not blind ourselves to the fact that the "Weather rule" and its fellow, the "Bunching rule," lend themselves peculiarly to gross abuses. They are employed constantly as pretexts for exempting favored industries from demurrage generally.

However, the committee was convinced that their omission from the individual plan would entail great hardship, but stated that "The average rule is intended to take care of all bunching and weather interference."

#### DEBITS AND CREDITS.

Complainant contends that the so-called average rule is not a true average rule, because only one day's credit is allowed upon a car

unloaded and returned to the interchange track before the free time begins to run. The industry, it is alleged, is justly entitled to credit for the extra day which it has saved by its promptness.

It appears unnecessary to here repeat what was said by the committee on car service and demurrage in its report to the convention of the Association of Railway Commissioners in recommending the average agreement. It is probably sufficient to say that that rule had both supporters and opponents. The elimination of the separation of cars into two classes was recommended. Acting thoughtfully and deliberately, the committee and the convention decided not to include in the average agreement provision that demurrage should not accrue on account of weather interference and bunching. The provision for but one day's credit was likewise purposely made.

The only change in the demurrage rules which, under this complaint, we would order has already been made by the carriers.

The complaint will, therefore, be dismissed.



FOURTH SECTION APPLICATION DOCKET No. 1243.

IN THE MATTER OF THE APPLICATION OF SOUTHERN  
PACIFIC COMPANY FOR RELIEF UNDER THE PROVI-  
SIONS OF THE FOURTH SECTION WITH RESPECT TO  
TRAFFIC MOVING BETWEEN PORTLAND AND SAN  
FRANCISCO AND OTHER SAN FRANCISCO BAY  
POINTS.

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*Submitted May 6, 1912. Decided June 6, 1912.*

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Upon application for modification of the conclusions of the original report herein, *Held*, that:

1. The carrier has not justified the application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco to Portland.
2. The carrier has justified the application of higher rates southbound from Portland to points inland than to San Francisco.
3. The carrier has not justified the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.
4. The carrier has not justified the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.
5. The carrier has not justified the reasonableness of the higher rates existing at points between San Francisco and Portland or the discrimination now existing against such intermediate points.

*Henry Thurtell* for Interstate Commerce Commission.

*Edward M. Cousin* for Willamette Valley shippers, interveners.

*Frank H. McCune* for Medford Traffic Bureau, and *T. Jones* Company, interveners.

*William R. Wheeler* and *Seth Mann* for Traffic Bureau of Merchants' Exchange of San Francisco, intervener.

*F. C. Dillard*, *W. F. Herrin*, *H. A. Scandrett*, *C. W. Durbrow*, *W. W. Cotten*, and *C. B. Squires* for Southern Pacific Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

A previous report in this matter, 22 I. C. C., 366, concluded as follows:

In view of the condition here presented, we must find that the carrier has not justified the rate situation presented in its tariff in these respects:

- (1) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco.

(2) The application of higher rates southbound from Portland to points inland than to San Francisco.

(3) The application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

(4) The application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.

(5) The application of unreasonably higher rates at intermediate points.

Instead, however, of denying the application of the carrier, we shall give permission for it to make a further showing under its application in accordance with the views herein expressed as to the requirements of the law.

The further hearing has been had in which all parties have been fully heard, and after full consideration of the record the Commission is of the following opinion:

(1) The carrier has not justified the application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco to Portland.

The carrier claims that it instituted this policy in 1906 to increase its loaded-car movement northward. The carrier was asked to submit a statement showing the empty-car movement northbound for a period of years prior to 1906 and subsequent thereto. It has submitted a statement of the empty-car movement northbound and southbound for the years subsequent to 1906 but has submitted no record for the years prior thereto. This statement shows that of all of the cars moving northbound between June 25 and December 31, 1906, 22 per cent went empty, while for the same period but 3 per cent of the cars moving southward were empty. During 1907, 40 per cent of the cars northbound were empties and 5 per cent of the cars moving southbound were empties. In 1908 approximately 31 per cent of the cars moving northbound were empty and 9 per cent of the cars moving southbound were empty. In 1909 the percentage was 34 per cent northbound and 10 per cent southbound. In 1910, 30 per cent northbound, 9 per cent southbound. In 1911, 20 per cent northbound, 13 per cent southbound. The great volume of lumber moving southbound during 1907, 1908, 1909, and 1910 accounts for the small percentage of empties southbound and the large percentage of empties northbound. There is nothing in the statement as to the number of empties moving northbound prior to 1906, when the rates were put in, ostensibly to give northbound lading. This showing is insufficient to satisfy us that some points intermediate between San Francisco and Portland should be given the water competitive rate that San Francisco enjoys unless the carrier is willing to extend this policy to all intermediate points.

(2) The carrier has justified the application of higher rates southbound from Portland to points inland than to San Francisco.

In this connection the following colloquy is pertinent. The witness on the stand was the traffic manager for the Southern Pacific, and the questions were put by an examiner:

TRAFFIC MANAGER. The reason we do not apply southbound to the inland points the same rates that we apply to San Francisco, while we make them the same northbound, is because there is no empty movement of cars southbound to any extent.

EXAMINER. Then, what you want the Commission to understand is this, with respect to 1 and 2, that you make your rates from Portland to San Francisco and to Lathrop and all these other points what you can get?

TRAFFIC MANAGER. Yes, sir.

EXAMINER. And that you are able to get these arbitraries above the San Francisco rate southbound, but that experience has demonstrated that while it would appear that you could get the same rate northbound, your northbound empty-car movement was so large that it was to your interest to make those rates even more attractive than the conditions would apparently warrant, and that you have made those rates more attractive in order to get more of your business to fill up your empty cars?

TRAFFIC MANAGER. That is it exactly.

(3) The carrier has not justified the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

The explanation of this situation given by the carrier through its traffic manager is as follows:

The rates northbound from San Francisco to points on the Willamette Valley are made by combining on Portland. The rate so made to each point in the Willamette Valley is different one from the other, according to the local rate in effect from Portland to points south, being a higher rate as you recede from Portland. And that applies, naturally, a higher rate to Willamette Valley points northbound from San Francisco to some of the points, and from points near Portland they would be less than the Sacramento rate. Generally speaking, I would state that to be correct.

The reason the Portland and Sacramento River points rates are lower is because the rate is made by combining, if you please, on San Francisco as far as Sacramento, and that is made by taking the ocean rate of 45 cents, first class, and adding to that the old Sacramento River rate of 15 cents, making a through rate of 60 cents, and that was the maximum at all points on the Sacramento River, and therefore was not a graduated rate or a full combination of what we might call the rail rates, but of the Sacramento River rates, and therefore made to Sacramento and made to points along the peninsula, Port Costa, and those points a 60-cent rate, which I considered generally lower than most of the points have on traffic going from San Francisco northbound to Willamette Valley points, because of the local rate increasing as we recede from Portland.

There has been no showing made, other than this, as to why the same policy should not be pursued by the carrier as to Willamette Valley points that is pursued by the carrier as to Sacramento River points. If Portland is not entitled to any lower rates to intermediate



points on the Sacramento River, then San Francisco is not entitled to any lower rates to intermediate points on the Willamette River.

(4) The carrier has not justified the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland. This matter was treated of in the previous report, and nothing was added by this record, excepting the statement that the carrier can not defend this situation excepting as a temporary matter. The rates which have been established by the Oregon commission as local rates from Portland south are effective at present, but the order of the commission is being resisted by the carrier and the case is now in the Supreme Court. When this litigation is concluded, the carrier says, if the Oregon commission scale is upheld, the rates to intermediate points will be made on the combination of the rate to Portland plus the Oregon commission scale south.

(5) The carrier has not justified the reasonableness of the higher rates existing at points intermediate between San Francisco and Portland or the extent to which it now discriminates against intermediate points.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET Nos. 67, 67-A, 67-B, 67-C,  
67-D, AND 67-E.

IN THE MATTER OF THE INVESTIGATION AND SUS-  
PENSION OF ADVANCES IN RATES BY CARRIERS FOR  
THE TRANSPORTATION OF APPLES IN CARLOADS.

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*Submitted May 11, 1912. Decided June 4, 1912.*

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Proposed increased rates on apples from southwestern Missouri River points to Minneapolis, St. Paul, and points in that territory, caused by the proposed cancellation of commodity rates and the application of fifth-class rates, not found to be unreasonable or unjustly discriminatory. Order of suspension vacated.

*T. A. McGrath* for Minneapolis Traffic Association.

*Joseph H. Beek* for St. Paul Association of Commerce.

*Leonard Brisley* for Minnesota apple dealers.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company and St. Paul & Kansas City Short Line Railroad Company.

*Fred G. Wright*, *Henry G. Herbel*, and *C. C. P. Rausch* for Missouri Pacific Railway Company.

*Asa G. Briggs* for Chicago Great Western Railroad Company.

*R. B. Scott* and *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*Richard L. Kennedy* and *W. D. Burr* for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

By tariff to become effective November 1, 1911, the existing commodity rates on apples from southwestern Missouri River points to St. Paul, Minneapolis, and other points in that territory were withdrawn, leaving to apply the fifth-class rates. This resulted in an increase of about 7 cents per 100 pounds and, upon complaint of apple dealers at Minneapolis and St. Paul, the increased rates were suspended until February 28, 1912, and resuspended until August 28, 1912, and an investigation entered upon to determine the propriety of the advanced rates.

The orders in Nos. 67-A, 67-B, 67-C, 67-D, and 67-E merely suspended tariffs similar or related to the schedule involved in No. 67.

The points of origin affected by this proceeding are in the apple-producing section along the east and west sides of the Missouri River, in the vicinity of St. Joseph, Mo., which point may be taken as representative. The points of destination are principally Minneapolis, St. Paul, South St. Paul, Minnesota Transfer, Winona, Minn., and La Crosse, Wis., but it is sufficient for the purposes of this case to consider only Minneapolis and St. Paul. For several years a commodity rate of 21 cents has applied on apples from and to the points in question, while the fifth-class rate has been 28 cents. The defense is that the commodity rate was established by the Chicago Great Western, the short line, under a misapprehension of fact, and that its action was necessarily, though reluctantly, followed by the other lines; that the normal basis for making rates on apples is fifth class, and that such rates obtain in this as well as practically all other territories; that the application of lower than fifth-class rates on this traffic results in undue preference to the producing territory and markets served and undue prejudice to other territories and markets, as well as a violation of the fourth section of the act in that the Chicago, Rock Island & Pacific is the only carrier applying the commodity rates to intermediate points.

These apple rates have been the subject of considerable controversy between shippers and carriers for a number of years, and have fluctuated from class to commodity and from commodity to class. Several years prior to 1906 a class rate of 28 cents obtained. In that year an unusually large crop was produced, apparently considerably in excess of the demand, and great difficulty was experienced by the growers in finding a market. To the carriers they appealed for relief, explaining that with a 21-cent freight rate it might be possible to get their fruit upon the market without a loss. The Chicago Great Western heeded this plea and published a 21-cent commodity rate to Minneapolis and St. Paul, but that rate was not made applicable to intermediate points. Necessarily, this was followed by similar action of the other carriers, and at the end of the season, or early in 1907, the commodity rate was withdrawn and the class rate restored. This was the situation on September 15, 1908, when, upon representation by the apple growers in this territory to the Chicago Great Western that the publication of a 21-cent rate would result not only in moving all of the apples from St. Joseph and its vicinity, but would also divert via that route a considerable quantity of the fruit grown farther east and then moving via St. Louis, that carrier again published the 21-cent commodity rate, which action, as before, was followed by the other lines. Except the Rock Island, however, the rate



had no application to intermediate points, the position of the carriers being that the rate was unreasonably low.

This situation continued until November 1, 1911, when the commodity rate was again withdrawn and the class rate restored. These class rates are the subject of this investigation. There is some intimation in the brief filed by the Minneapolis traffic association, though there is no evidence to that effect, that as early as 1896 the Chicago Great Western notified the western trunk line committee of its desire to establish a 21-cent rate, and that its request was overruled by the committee. It is enough to say that the rate has varied between the class and commodity basis with more or less frequency since about 1896, although from 1902 to the latter part of 1906 it was stable at the class rate of 28 cents. Nothing in the record, however, apprises us of the conditions existing prior to 1906, and we are not informed of the influences that may have prompted these fluctuations. Since 1906 it is clear that the commodity rate was established at the urgent solicitation of the shippers, and that in its establishment practically no consideration was given to its reasonableness. The reason for its restoration in 1908, however, does not warrant so strong a presumption that its reestablishment was for such philanthropic purposes. It is true the other carriers acquiesced in the Great Western's action, for there was no alternative if they were to participate in the traffic. The presumption raised by this rate history, therefore, is mainly against the Great Western.

Only to the Minneapolis and St. Paul markets do apples move from this southwestern Missouri River territory upon other than class rates, and, except from certain points in Colorado and California in the extreme west as well as a few points in Arkansas, from all of which the fifth-class rates are quite high, apples take the fifth-class rate. There is no contention that the fifth-class rate is too high, and if it be true that apples properly should take fifth class from this territory, the suspension of the proposed rates should be vacated.

Class rates from Kansas City and St. Joseph are made with reference to the 200-mile scale between Hannibal and St. Joseph, which, on first class, is 60 cents, and on fifth class, 22 cents. This is the scale applied between Kansas City and St. Louis, and that basis is extended to Peoria, which, from Kansas City, takes a fifth-class rate of 24½ cents, to Chicago 27 cents, and to St. Paul 28 cents. From St. Louis apples move into Minneapolis and St. Paul upon a fifth-class rate of 21 cents, to Chicago 20 cents. There is some contention that southwestern Missouri River points would be unable to market their apples in Minneapolis and St. Paul at more than the St. Louis rate, the variety of apples in the southwestern Missouri and the Mississippi valley territories being the same. This contention was chiefly advanced by the apple dealers in Minnesota, rather than by the apple

growers themselves, whose price at the orchard is said to be but little affected by freight rates. However, it appears that the Minnesota apple dealer goes as far as Colorado and sometimes California for his fruit, and in these sections purchases the same varieties as those grown in the Missouri River territory, as well as other apples with which these compete, all of which he ships to Minneapolis and St. Paul at freight rates of 75 cents, and in some instances \$1. While some reference was made to a purchase price of \$2.25 per barrel, a freight rate aggregating 34 cents per barrel at the 21-cent rate, and a selling price of \$2.75, leaving a gross profit of 16 cents per barrel, which at the 28-cent rate would be reduced to 5 cents, we are not impressed with the figures, for the reason that there does not appear to be sufficient stability in either the orchard or market price of apples to make a variation of 7 cents per 100 pounds vital. In a number of instances apples are purchased and stored either in transit or at destination and later sold at prices as much as \$2 per barrel more than could have been obtained on the market on the date of purchase. The further fact that apples transported at a freight rate of 75 cents compete with apples from this Missouri River territory leads us to believe that in the proposed adjustment there will be no discrimination against either the producer or the buyer.

Passing then to a consideration of the reasonableness of the 28-cent rate, the following table is illustrative:

*Statement of distances, rates and rates per ton per mile on apples, carloads, from points on and west of Missouri River to various points.*

From—	To—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
		<i>Miles.</i>	<i>Cents.</i>	
Kansas City Mo.....	Chicago, Ill.....	458	27	0.0118
Do.....	Peoria, Ill.....	353	24½	.0138
Do.....	St. Louis, Mo.....	277	22	.0158
Do.....	Sioux City, Iowa.....	343	17½	.0101
Do.....	St. Paul, Minn.....	533	21	.0078
Do.....	do.....	533	28	.0105
St. Joseph, Mo.....	do.....	469	21	.0089
Do.....	do.....	469	28	.0120
Sabetha, Kans.....	do.....	530	24	.009
Do.....	do.....	530	31	.0116
Hiawatha, Kans.....	do.....	512	21	.0082
Do.....	do.....	512	28	.0109

It will be noted that the 21-cent commodity rate to Minneapolis and St. Paul from Kansas City, 533 miles, and St. Joseph, 469 miles, is lower than the fifth-class rate of 22 cents from Kansas City to St. Louis, 277 miles. In *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134, we found to be reasonable an average rate of 21½ cents from Missouri, Kansas, and Arkansas points to St. Louis, an average distance of 282 miles, making an average per-ton-per-mile revenue of 15.2 mills. From Quincy, Ill., to Minneapolis, 487 miles, 24 I. C. C.

the fifth-class rate is 20 cents, or 8 mills per ton per mile, and considerable stress was laid upon this and similar rates east of the river by the Minneapolis dealers. However, these rates are made with relation to the rates from St. Louis, which, in turn, are but 5 per cent above the Chicago rate, the later being made with some relation to the rate to Minneapolis through Duluth, and under these circumstances we are not prepared to accept this comparison.

We have frequently recognized the difference in the rate adjustment east and west of the Mississippi River, and have held that the basis obtaining west may properly be on a higher scale than that obtaining east. *Greater Des Moines Committee v. C., M. & St. P. Ry. Co.*, 18 I. C. C., 73. As the fifth-class rate from Kansas City and St. Joseph bears a proper relationship to the fifth-class rate from St. Louis and that territory, and as, with but few exceptions, apples move under fifth-class rates, we can not find that a rate of 28 cents is unreasonable. Its reestablishment will have the effect of removing a discrimination now existing in the rates to certain intermediate points on all lines other than the Rock Island. Our order suspending the proposed increased rates therefore will be vacated.

24 I. C. C.



INVESTIGATION AND SUSPENSION DOCKET NOS. 60 AND 60-A.  
IN THE MATTER OF THE INVESTIGATION AND SUS-  
PENSION OF ADVANCES IN RATES BY CARRIERS FOR  
THE TRANSPORTATION OF SOFT COAL.

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*Submitted May 3, 1912. Decided June 4, 1912.*

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Defendants canceled joint rates on soft coal from Springfield and southern Illinois mines to stations on the Missouri Pacific Railway in Kansas and Nebraska, leaving to apply combinations of intermediate rates which resulted in higher charges; *Held*, That the increased rates have not been shown to be reasonable and that the basis in effect prior to the proposed change should be restored.

*C. E. Childe* for Sunderland Brothers Company and Zeigler District Colliery Company.

*W. A. Holley* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This is an investigation to determine the propriety of an advance in rates on soft coal from Springfield and southern Illinois mines to stations on the Missouri Pacific Railway in Kansas and Nebraska, caused by the cancellation of joint rates and the application of combinations of intermediate rates resulting in higher charges. The schedule proposing this change was suspended until January 13, 1912, and as our investigation could not be completed by that date, a further suspension until July 13 was ordered. No. 60-A relates only to the suspension of an item in a schedule filed after the original suspension providing that the restored rates would be effective only until the close of business on January 12, 1912.

This proceeding grew out of a complaint received from coal operators at Christopher, Ill., on the tracks only of the Chicago, Burlington & Quincy Railroad, although Christopher is reached also by the Illinois Central. It is 82 miles east of East St. Louis via the latter road, but traffic originating at mines on the Chicago, Burlington & Quincy, to which we have referred, does not move through East St. Louis, but follows the line of the Chicago, Burlington & Quincy Railroad to the Missouri River, where for a number of years it has been delivered to the Missouri Pacific for transportation to local points on its line at a joint rate made by the addition of an arbi-

trary of 40 cents over the East St. Louis rate. The local rate of the Illinois Central from Christopher to East St. Louis is 40 cents, but the Burlington makes no rate to that point, to reach which it would have to haul the traffic northwest to Concord, thence south to East St. Louis, a distance of 257 miles.

In 1911 the Missouri Pacific, apparently not satisfied with its division, provided that the rates on all soft coal from St. Louis, East St. Louis, Peoria, Chicago, and points taking the same rates, would apply only via East St. Louis and the Missouri Pacific. Christopher was not affected by this publication. Effective September 15, 1911, the Missouri Pacific, being unable to prevail upon the Chicago, Burlington & Quincy to send its coal from Christopher via East St. Louis, withdrew the application of the joint rates and substituted therefor combination rates, without reference, however, to the routing. In some instances this resulted in an increase of from 20 cents to 88.4 cents per ton and the schedule was suspended. To restore the joint rates, supplement No. 3 to Hosmer's I. C. C. No. A-219 was issued, purporting to carry forward the old rates, although there now appears to be some discrepancy in this regard. On September 21, 1911, ten days after our suspension order, supplement No. 4, effective September 25, was issued, restricting the application of these joint rates to East St. Louis in connection with the Missouri Pacific. By this subtle action the Missouri Pacific achieved the result for which it strove before the cancellation of the joint rates, and now has in effect a tariff, to transport coal from Christopher under which the Burlington would have to make an absurdly impractical haul of 257 miles, involving a junction transfer, and receive therefor 40 cents per ton, or 1.55 mills per ton per mile.

The only defendant who appeared at the hearing was the Chicago, Burlington & Quincy Railroad, and that carrier, whose interest is really that of a complainant rather than a defendant, insisted that the former joint rates were reasonable and that the entire controversy was due to the selfish desire of the Missouri Pacific, not only to deprive it of a haul to which it was justly entitled, but also to compel it to make delivery to the Missouri Pacific at East St. Louis at a ridiculously low division of the joint rate. In the matter of the division of the rate the shipper has no interest, but in the route his shipment takes he frequently has. To send traffic via the route dictated by the Missouri Pacific would involve a material and unnecessary delay; in fact it was testified that the delay would be more than a week. It is certainly not fair to the shipper to subject him to such a hardship, and we do not think the route via East St. Louis reasonably practicable. As to the proposed increased rates, our opinion is that they have not been shown to be reasonable. As already

stated, the joint rates now published in supplement No. 3 do not appear to be correct reissues of the rates effective prior thereto. It further appears that since this investigation was instituted the Missouri Pacific has made certain reductions in its rates from East St. Louis, and our finding is that the basis heretofore in effect should be restored; that is, a joint rate should be published applicable from complainants' mines at Christopher via the Chicago, Burlington & Quincy, the Missouri River, and the Missouri Pacific, to points of destination on the Missouri Pacific in Kansas and Nebraska which will not exceed 40 cents per ton above the current East St. Louis rate.

The action of the Missouri Pacific in restricting by supplement No. 4 the application of the rates to East St. Louis was taken subsequent to our suspension order and in flagrant disregard thereof. We can not assume that the Missouri Pacific failed to understand that our suspension order contemplated the restoration of the theretofore existing conditions.

An order in accordance with these findings will be issued.

24 I. C. C.



No. 3799.  
SANTA ROSA TRAFFIC ASSOCIATION  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

*Submitted May 1, 1912. Decided June 4, 1912.*

The extension of terminal rates to Santa Clara, San Jose, and Marysville, Cal., on westbound transcontinental traffic, and the refusal to extend such rates to Santa Rosa, Cal., held not justified by any substantial dissimilarity of circumstances and conditions and therefore unduly prejudicial to Santa Rosa. Defendants required to remove this discrimination.

*W. F. Cowan and C. J. Lathrop* for complainant.

*C. W. Durbrow, F. C. Dillard, and H. A. Scandrett* for Union Pacific Railroad and Southern Pacific Company.

*E. S. Phillipsbury* for Atchison, Topeka & Santa Fe Railway Company.

*Jesse W. Lilienthal and Albert Raymond* for Northwestern Pacific Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The city of Santa Rosa, Cal., through its traffic association, asks that it be given terminal rates on westbound transcontinental traffic. The present rates, based on the rates to the nearest terminal plus the local therefrom to Santa Rosa, are alleged to be unreasonable and unduly prejudicial to Santa Rosa and unduly preferential to San Jose, Santa Clara, Marysville, and other California points now given the benefit of terminal rates, although not strictly terminal points—that is, not accessible by deep-water craft. No testimony was introduced as to the inherent unreasonableness of the rates, and we shall confine ourselves to the question of discrimination.

Without going into their history, it is enough to say that terminal rates originally applied only to Pacific coast points reached by ocean-going vessels. Later these rates were extended to places accessible from the Pacific coast by vessels of lighter draft, because, it is said, the ocean carriers were absorbing the charges of the lighter vessels, and it became necessary for the transcontinental rail lines to extend

their terminal rates farther inland to meet this competition. On account of the same process of absorption, these rates were next extended to points located near but not upon waters navigable from the coast, to handle the freight to which necessitated a wagon haul for a distance, in some instances, of 6 miles. San Jose and Santa Clara are within the latter class. Marysville, while located on a branch of the Sacramento River, is well beyond the head of navigation. There is a tradition that steamers once plied there, but no one has been found willing to testify to this fact of his own knowledge.

Santa Rosa is located at the junction of the Northwestern Pacific Railroad and the Southern Pacific Company. After passing over the eastern lines, transcontinental freight is transported to that city by the Southern Pacific via Suisun and Shellville. Via the Northwestern Pacific traffic may be handled either via the Southern Pacific to Shellville, thence southwest over a short branch of the Northwestern to its main line, thence northwest to Santa Rosa, or via San Francisco, by barge to Tiburon, thence via the Northwestern to destination. Santa Rosa is 52 miles north of San Francisco, while San Jose is 48 miles south.

There is an available route from San Francisco to Santa Rosa by boat to Petaluma, 46 miles, thence via an electric line 16 miles to Santa Rosa. It is said that this is a practical route and is now in effect for through traffic in connection with the Western Pacific at San Francisco. San Jose and Santa Clara, on the other hand, are from 8 to 10 miles beyond tidewater, and to permit a water haul from San Francisco would necessitate cartage for the remaining distance. This appears also to be true of Marysville, to which point the water competition is not actual, nor, apparently, potential. Under these circumstances it would seem that if defendants were justified in extending to San Jose, Santa Clara, and Marysville, terminal rates because of water and wagon competition, they would be even more justified in granting the same basis to Santa Rosa, to which point no cartage beyond tidewater is necessary. While we must not be understood as approving an extension of these terminal rates, we do hold that the theory under which such rates are extended to the points already enumerated applies equally to Santa Rosa.

No testimony was introduced by defendants, who submitted the case upon the evidence presented by complainant. They argue, however, that Santa Rosa is located on a branch line, while the other points are on the main line, and for that reason the conditions are sufficiently dissimilar to warrant the existing differences in rates. On the Northwestern Pacific Santa Rosa is not on a branch line, but on the Southern Pacific it is situated on the branch extending from Suisun, 49 miles. Santa Clara and San Jose are on the main line



of the Southern Pacific coast line extending southeast from San Francisco to Los Angeles, but traffic moving from Missouri River points through Stockton leaves the main line of the Southern Pacific at Niles, and comes south to San Jose over a branch line, and via this route considerable traffic actually moves. On similar traffic, Santa Clara would be practically a branch-line point. But even if it be conceded that the others are main-line points and Santa Rosa a branch-line station, we do not think this creates the necessary dissimilarity in circumstances and conditions to justify the extension of terminal rates to the other cities to the exclusion of Santa Rosa when we remember that such extension of terminal rates is justified primarily on the ground of water competition. In other words, we think that defendants' argument, suggesting as it does an increase in the cost of operating, goes more to the reasonableness of the rate than to the particular form of discrimination here presented.

The main defense is that complainant has failed to show that it is in competition with San Jose, Santa Clara, and Marysville, and that, therefore, no finding of unjust discrimination can be made. A witness connected with the chamber of commerce testified as to his inability to induce the location of factories and other industries at Santa Rosa, such industries locating at points to which the terminal rates applied. Of course, this testimony is not of itself sufficient to establish undue prejudice against Santa Rosa because of the present rate adjustment, but the narrow construction of the law urged by defendants is not in harmony with the spirit of the act to regulate commerce nor in keeping with the principle enunciated by the Supreme Court in *T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197, where it was said:

In passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment.

It is true the present record is extremely meager so far as a specific showing of competition between Santa Rosa and the points taking terminal rates is concerned, but if these cities do not now compete in intermediate territory, at least the Santa Rosa merchant, whether wholesale or retail, pays just so much more for his goods than his brother merchant in those favored towns, and this amount is, in many cases, considerable. If he sells his goods to a customer at the same price as does the San Jose and Santa Clara merchant he loses just



so much and is therefore prejudiced to that extent. If, on the other hand, he recoups himself for this difference in the freight rate by an increased price to his customer at or in the vicinity of Santa Rosa, then that customer is prejudiced to exactly the same extent. In the case of *Board of Trade of Dawson v. C. of G. Ry. Co.*, 8 I. C. C., 142-151, reviewing a somewhat analogous situation, we said:

Granting that a carrier may make lower rates to competitive points than are made to intermediate noncompetitive points, we think it clear that the carrier is not at liberty in the selection of these basing points to determine that this town shall have the benefit of the low rate and that town shall not, when the means of competition and the conditions surrounding that competition do not materially differ.

The point is made that Santa Rosa is not so important commercially as San Jose. However, under the present rate adjustment, this condition will not only continue, but doubtless become fortified from year to year, since the more favorable freight rates to San Jose must each day increase this difference in commercial importance. On the whole, we find that Santa Rosa bears such a competitive relation to the aforesaid cities taking terminal rates as to be prejudiced by a difference in westbound transcontinental rates, and that such prejudice is undue, as there is no substantial dissimilarity in the circumstances and conditions affecting the respective transportations. Defendants will be required to cease this discrimination, and, so long as terminal rates are applied to San Jose, Santa Clara, or Marysville, rates no higher must be charged to Santa Rosa. It will be so ordered.

No. 4361.

MAYOR AND COUNCIL OF BOSTON, GA.,

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted May 31, 1912. Decided June 4, 1912.*

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1. The record shows no substantial dissimilarity of circumstances and conditions affecting the transportation of freight to Boston, Ga., as compared with Quitman and Thomasville, Ga., both rail and water competition appearing to be practically the same at the three places, and the charging of a differential higher than the Quitman or Thomasville rate on all traffic to Boston from New York and from Ohio River crossings, on sugar from New Orleans, La., and on acid phosphate from Montgomery, Ala., is unduly prejudicial to Boston and unduly preferential to Quitman and Thomasville. Carriers ordered to remove the discrimination.
2. The filing of an application by defendants for relief from section 4 of the act does not preclude a determination of the complaint under section 3, for a point may be unduly preferred for reasons other than those covered by section 4.
3. The financial inability of defendants to extend to Boston the Thomasville-Quitman rates, even if this could be established as a fact, is no answer to the charge of undue preference.

*Snodgrass & McIntyre* for complainants.

*M. P. Callaway* for Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Georgia Southern & Florida Railway Company; Seaboard Air Line Railway; Mobile & Ohio Railroad Company; and Ocean Steamship Company.

#### REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The complaint in this proceeding, filed by the mayor and council of the city of Boston, Ga., alleges that Boston, its merchants, and its traffic are unduly prejudiced, and Thomasville, Valdosta, and Quitman, Ga., unduly preferred by reason of the higher rates charged to Boston on all traffic from New York and the Ohio River crossings, on sugar from New Orleans, La., and on acid phosphate from Montgomery, Ala. The reasonableness of the rates is not in issue, and complainant does not rely upon the fourth section, application for relief from which has been filed by defendants. Pending action by the Commission upon this application defendants are not prohibited from charging more for the shorter than for the longer

haul, but this does not preclude a determination of the complaint under the third section, the one solely relied upon, for a point may be unduly preferred for reasons other than those covered by the fourth section.

All of the points named are on the Atlantic Coast Line, Boston being practically midway between Thomasville on the west and Quitman on the east; Valdosta is 17 miles east of Quitman and the distances from Savannah are as follows: Valdosta 158 miles, Quitman 175 miles, Boston 189 miles, and Thomasville 201 miles. Except for some minor variations the rates from the east, all-rail, and water-and-rail, New York being the typical point of origin, are the same to Valdosta, Quitman, and Thomasville, while Boston takes the following differentials in cents per 100 pounds higher:

Class -----	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential -----	9	9	5	5	4	4	2	0	4	4	6	6	13

From the west, Ohio River crossings, taking Louisville as typical, the short-line distances are: Thomasville 692 miles, Boston 700 miles, Quitman 695 miles, and Valdosta 691 miles. If transported by the Atlantic Coast Line, however, the traffic would move through Thomasville, Boston, and Quitman to Valdosta, in the order named, and the differences in distance would be the same as on traffic from the east. From Ohio River crossings the rates to Thomasville, Quitman, and Valdosta are the same, while to Boston the following differentials in cents per 100 pounds are added:

Class -----	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential --	3	3	2	2	2	2	2	4	2	2	4	4	4

From New Orleans the distances are: Thomasville 464 miles; Boston, 476 miles; Quitman, 490 miles; and Valdosta, 507 miles. This traffic ordinarily moves via River Junction, Fla., in connection with the Atlantic Coast Line, and on sugar, Boston takes a differential of 2 cents per 100 pounds over the other points, both carload and less than carload.

The distances from Montgomery are: Thomasville, 210 miles; Boston, 222 miles; Quitman, 236 miles; and Valdosta, 253 miles. The rate on acid phosphate from Montgomery to Boston is 20 cents per ton higher than to Thomasville, Quitman, or Valdosta.

The defense is that the circumstances and conditions affecting transportation to Boston are substantially dissimilar to those existing at the other points; that for a number of years the rates to noncompetitive points have been made under the basing-point system—local rate added to the rate to the basing point—but that several years ago the Atlantic Coast Line departed from this basis and made rates to Boston and points similarly situated certain differentials higher than the basing-point rate, such differentials being considerably less than the



local rate; that the result of this adjustment was to give to such noncompetitive points the full benefit of competition to which they had theretofore not been considered entitled; and that this concession on the part of defendants is as far as they feel financially able to go.

As already stated, the reasonableness of the rates is not in issue and the financial inability of defendants to extend to Boston the Thomasville-Quitman rates, even if this could be established as a fact, is no answer to the charge of undue preference. We shall therefore proceed to determine whether or not the circumstances and conditions attaching to the transportation to Thomasville, Quitman, and Valdosta, are sufficiently dissimilar to justify the preferential treatment of those points.

The adjustment of rates in this territory has been the subject of previous complaints to this Commission, and the method of rate construction, as also the presence or absence of competition, has heretofore been discussed. *Board of Trade of Dawson v. C. of G. Ry. Co.*, 8 I. C. C., 142; *Mayor and Council of Tifton v. L. & N. R. R. Co.*, 9 I. C. C., 181.

Dawson is located on the Seaboard Air Line (formerly the Georgia & Alabama Railroad) between Columbus and Albany, and on the Central of Georgia between Eufaula and Albany. Upon complaint of the board of trade of that city the Commission ordered that on freight from New York, Dawson should take a rate not higher than Eufaula; that from the Ohio River crossings the rate should not be higher than to Albany; and that from New Orleans the rate should not be higher to Dawson than to Americus or Albany. On traffic from New York moving via Savannah the route from Savannah to Dawson via the Seaboard Air Line was circuitous and freight ordinarily moved via Americus in connection with the Central of Georgia. In the instant case the Atlantic Coast Line has a direct line from Savannah or Brunswick to all the points involved in this complaint.

In the *Tifton case* we held that the rail-and-water rate from New York to Tifton should not exceed the rate to Albany, the longer-distance point; that from the Ohio River crossings, and on sugar from New Orleans, Tifton should take not higher than the Valdosta rate.

In the present case Boston is also reached by the Georgia Northern Railway, extending from Boston to Albany, where it connects with the Seaboard Air Line and the Central of Georgia, forming a through route for traffic from the west, nearly half of which reaches Boston in that manner. The only road other than the Atlantic Coast Line reaching Quitman is the South Georgia Railroad, connecting at Adel with the Georgia Southern & Florida, extending up to Macon. Thomasville is the Southern terminus of the Atlanta, Birmingham & Atlantic Railroad, extending to Birmingham and Atlanta and, with

its connections there, forms an independent route for traffic from the west. It appears, however, that neither the rate to Thomasville nor that to Valdosta or Quitman has been materially influenced by the competition of carriers. In fact, carrier competition is more or less conspicuous for its absence. The Valdosta rates were put in "as a compromise" to satisfy a complaint from the merchants at that place who wished to be placed on the Albany basis. Upon complaint to this Commission Tifton was given the Valdosta rates from the south and west, and the Albany rates from the east. Then followed complaints from Tifton and Thomasville and "the management of the Atlantic Coast Line concluded it would establish at these four competitive points, Thomasville, Tifton, Valdosta, and Quitman, practically the same basis of rates." Water competition via Savannah or Brunswick can not affect this situation, since the Atlantic Coast Line is the direct route from both ports to all the points here involved.

So far as carrier competition is concerned, we are unable to find that it is more potent at Quitman or Thomasville than at Boston. The Atlanta, Birmingham and Atlantic, extending from Thomasville to Birmingham and Atlanta, might be a stronger factor in making rates from the west than the lines other than the Atlantic Coast Line reaching Boston and Quitman, but there is nothing in the record by which this can be determined; nor do we think it very material since it does not appear that the Atlanta, Birmingham & Atlantic is responsible for the Thomasville rates. It was urged that for rate-making purposes Boston was virtually local to the Atlantic Coast Line because the Georgia Northern had no voice in making the rates to that point, although it was admitted that, with its connections, it might be able to dictate some of the rates. The situation at Quitman is identical and in answer to this same defense, urged in the *Tifton case, supra*, the Commission said:

Neither the absence nor presence of competition by carriers alone, nor the extent of its operation measured solely by their financial interests, can be relied on to adjust rates reasonable and just to all. There may be effectual means foreign to local traffic conditions for curbing competition at one point and not at another. One carrier may deem lower rates just and due to a given point and desire to put them in, and yet be restrained because of the power of retaliation or the threat of rate changes by a rival carrier at some other point detrimental to the former carrier. The necessary result of the theory set up in defense of these rates would be to allow the carriers to create and shape the conditions to justify their rates. They could, among other things, restrain competition at one place by agreement or otherwise and not do so at another, and that, too, independent of equal facilities for competition in carrying at both.

All of these cities are in active competition, each with the other, and any difference in freight rates makes to the advantage of the point favored and to the disadvantage of the point not favored. By

order of the railroad commission of Georgia defendants, since the latter part of 1906, on intrastate traffic, have applied the Quitman and Thomasville rates to Boston.

From a consideration of all the facts before us we are unable to find any substantial dissimilarity of circumstances and conditions affecting the transportation to Boston as compared with Quitman and Thomasville upon the commodities and from the points of origin here involved. Our finding therefore is that the adjustment of rates complained of unduly prejudices Boston, its merchants, and its traffic, and unduly prefers Thomasville and Quitman. Defendants will be required to cease this unjust discrimination and in the future to apply from New York water-and-rail rates not higher than contemporaneously charged to Thomasville; from Louisville and other Ohio River crossings, rates not higher than contemporaneously in effect to Quitman; on sugar from New Orleans and acid phosphate from Montgomery, Ala., rates not higher than are exacted for similar transportation to Quitman. An order in accordance with these findings will be issued.

24 I. C. C.



No. 3993.

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK  
ET AL.

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COM-  
PANY ET AL.

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*Submitted April 10, 1912. Decided June 4, 1912.*

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1. Differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadelphia should not exceed 2 cents per 100 pounds, on the classes and on commodities other than grain. On all-rail and lake-and-rail export shipments of grain the differentials under New York should not exceed 1.5 cents per 100 pounds to Baltimore, and 1 cent per 100 pounds to Philadelphia.
2. As to all this traffic the export rates to Boston should not be lower than to New York.
3. The differentials under New York from Buffalo, N. Y., Erie, Pa., and West Fairport, Ohio, to Baltimore and Philadelphia, on ex-lake grain from differential territory for export, should not exceed two-tenths of 1 cent per bushel on barley and oats, and three-tenths of 1 cent per bushel on wheat, corn, and rye.
4. Differentials under New York on import traffic, all-rail and lake-and-rail, from Philadelphia and Baltimore to differential territory should be no greater than those which existed in the latter part of 1908.
5. Import rates from Boston should not be lower than from New York.

*Benjamin L. Fairchild* for complainants.

*Clyde Brown* for New York Central & Hudson River Railroad Company.

*George Stuart Patterson* for Pennsylvania Railroad Company.

*W. Irvine Cross* for Baltimore & Ohio Railroad Company.

*Charles S. Hamlin* for Boston & Maine Railroad.

*Thomas Carmody* and *Henry Selden Bacon* for state of New York.

*John F. O'Brien* and *Archibald R. Watson* for city of New York.

*William M. Coates* for Philadelphia trade bodies.

*Frank L. Neall* for the city of Philadelphia.

*Harry E. Belles* for United Businessmen's Association of Philadelphia.

*Philip Godley* and *E. J. Lavino* for Philadelphia Board of Trade.

*James Collins Jones* for Philadelphia Board of Trade, Philadelphia Chamber of Commerce, Commercial Exchange of Philadelphia, and Philadelphia Maritime Exchange.

*James L. King* for Commercial Exchange of Philadelphia.

*Willard U. Taylor* for Maritime Association of Port of New York.

*P. D. Todd* and *P. F. Young* for Philadelphia Maritime Exchange.

*N. B. Kelly* for Philadelphia Chamber of Commerce.

*Robert Ramsay* for commercial bodies of Baltimore.

*Arthur Geo. Brown* and *John B. Daish* for Baltimore Chamber of Commerce and Board of Trade of the city of Baltimore.

*Ottmar Marcus* for Old Town Merchants & Manufacturers' Association of Baltimore.

*Andrew C. Trippe* and *James McC. Trippe* for Merchants & Manufacturers' Association of Baltimore.

*S. S. Field* for mayor and city council of Baltimore.

*Edgar Allan Poe* for state of Maryland.

*Herbert Sheridan* for Baltimore Chamber of Commerce.

*Charles S. Hamlin* and *D. O. Ives* for Boston Chamber of Commerce.

*James M. Swift* for commonwealth of Massachusetts.

*H. C. Barlow* for Chicago Association of Commerce.

*John C. Howard* for S. E. Comstock & Company.

#### REPORT OF THE COMMISSION.

##### CLARK, *Commissioner*:

Complainants are associations of merchants located in the city of New York, organized for the purpose of fostering and furthering the interests of their respective lines of business and the commercial interests of the state and city of New York.

The complaint alleges that defendants maintain rates, charges, differentials, rules, and regulations to and from the city and port of New York, which are unjust and unreasonable in themselves, and relatively so as compared with competitive ports, more particularly Philadelphia, Baltimore, Newport News, Norfolk, and Boston. As presented on hearing, brief, and argument, the issue is the inland charges on import and export traffic having destination or origin in so-called "differential territory." That territory is bounded on the north by the great lakes and a line drawn west from Chicago, Ill., to Dubuque, Iowa; on the east by a line drawn from Pittsburgh, Pa., to Buffalo, N. Y.; on the south by the Ohio River, and on the west by the Mississippi River.

Complainants allege that higher rates to and from New York on this traffic than are contemporaneously charged to and from Boston, Philadelphia, and Baltimore, are unjustly discriminatory against New York and unduly preferential to Boston, Philadelphia, and Baltimore.

Norfolk and Newport News, Va., were named in the complaint, but practically no attention was paid to them in the trial.

The Maritime Association of the port of New York, the city of New York by its corporation counsel, and the state of New York by its attorney general, intervened in support of the complaint.



The Boston Chamber of Commerce, the directors of the port of Boston, and the commonwealth of Massachusetts through its attorney general intervened asking affirmative relief, and that the rates to and from Boston be made no higher than to and from Baltimore.

The Baltimore Chamber of Commerce, the Board of Trade of the city of Baltimore, the mayor and city council of Baltimore through the city solicitor, the state of Maryland by its attorney general, the Philadelphia Board of Trade, the Philadelphia Chamber of Commerce, the Commercial Exchange of Philadelphia, the Philadelphia Maritime Exchange, and the city of Philadelphia by its mayor intervened in opposition to the complaint and in favor of maintenance of the former relative adjustment.

The burden of the defense has been borne by the Pennsylvania Railroad and its allied lines and by the Baltimore & Ohio Railroad, these defendants asserting the propriety and the right of maintaining lower rates to and from Philadelphia and Baltimore than to and from New York. The Erie Railroad, with a through line from Chicago to New York, filed no answer to the complaint. The other New York roads filed general denials. The Boston & Maine and the Boston & Albany Railroads joined with Boston in asserting the interests of the port of Boston and their right as carriers to make such rates to and from Boston as the interests of that port and the carriers serving it demand.

The Baltimore & Ohio and the Pennsylvania base their defense principally upon the fact that the rail haul to or from Baltimore or Philadelphia is shorter than to or from New York, and that therefore lower rates to and from Philadelphia or Baltimore than to and from New York are fully justified.

The issue is a long-standing controversy which originated in and has been kept alive by the competition of railroads serving the several ports and by the commercial interests at those ports. It is conceded by one of the principal witnesses for defendants that the so-called differential port adjustment is more or less arbitrary in its nature and is the result of compromise and arbitration resorted to to settle or avert rate wars.

The rates in question are (a) via all rail; (b) via lake and rail; and (c) ex-lake—that is, from the lake ports to the Atlantic ports. All rates stated herein, unless otherwise specified, are in cents per 100 pounds. Our docket No. 3780, *In the Matter of Import Rates*, was heard and decided in connection with the instant case.

The history of the all-rail differentials on export traffic was recited in *In the Matter of Differential Freight Rates to and from North Atlantic ports*, 11 I. C. C., 13, and need not be restated here. It is a matter of common knowledge that since that report was written the Baltimore & Ohio, if not the Pennsylvania also, has acquired new lines



which substantially strengthen its commanding and strategic position in the middle west.

The present eastbound all-rail class rates, taking Chicago as a representative point, are as follows:

Classes.....	1	2	3	4	5	6
To New York, domestic and export.....	75	65	50	35	30	25
To Philadelphia, domestic and export.....	73	63	48	33	28	23
To Baltimore, domestic and export.....	72	62	47	32	27	22
To Boston, domestic.....	82	71	55	39	33	27
To Boston, export.....	75	65	50	35	30	25

The present eastbound lake-and-rail class rates, taking Chicago as a representative point, are as follows:

Classes.....	1	2	3	4	5	6
To New York, domestic and export.....	63	55	43	30	26	21
To Philadelphia, domestic and export.....	61	53	41	28	24	19
To Baltimore, domestic and export.....	60	52	40	27	23	18
To Boston, domestic.....	70	61	48	34	29	23
To Boston, export.....	63	55	43	30	26	21

The present ex-lake rates on grain to the ports, export and domestic, are as follows, in cents per bushel:

	Wheat.	Corn.	Rye.	Barley.	Oats.
From Buffalo, N. Y., to—					
New York—					
Export.....	5½	4½	5½	4½	3½
Domestic.....	6½	5½	6	5½	4
Philadelphia and Baltimore—					
Export.....	5½	4½	4½	4½	3½
Domestic.....	6½	5½	6	5½	3½
Boston—					
Export.....	5½	4½	5½	4½	3½
Domestic.....	8	7½	7½	6½	4½
From Erie to—					
New York—					
Export.....	5½	4½	5½	4½	3½
Domestic.....	6½	5½	6	5½	4
Philadelphia—					
Export.....	5½	4½	4½	4½	3½
Domestic.....	6½	5½	6	5½	3½
Baltimore—					
Export.....	5½	4½	4½	4½	3½
Domestic.....	6	4½	5½	4½	3½
From West Fairport to—					
Baltimore—					
Export.....	5½	4½	4½	4½	3½
Domestic.....	6	4½	5½	4½	3½
Philadelphia—					
Export and domestic.....	6½	5½	6	5½	3½

The westbound all-rail class rates to Chicago from the several ports are as follows:

Classes.....	1	2	3	4	5	6
New York, domestic and import.....	75	65	50	35	30	25
Philadelphia, domestic.....	69	59	48	33	28	23
Philadelphia, import.....	67	57	47	32	27	22
Baltimore, domestic and import.....	67	57	47	32	27	22
Boston, domestic.....	75	65	50	35	30	25
Boston, import.....	67	57	47	32	27	22

The westbound lake-and-rail class rates to Chicago from the several ports are as follows:

Classes.....	1	2	3	4	5	6
New York, domestic and import.....	62	54	41	30	25	21
Philadelphia, domestic and import.....	56	48	39	28	23	19
Baltimore, domestic and import.....	54	46	38	27	22	18
Boston, domestic.....	62	54	41	30	25	21
Boston, import.....	57	50	38	27	23	20

The import rates from Boston, Philadelphia, and Baltimore are the same under a temporary arbitration decision, the final determination of which is announced in *In the Matter of Import Rates*, 24 I. C. C., 78.

While little has been said as to Newport News and Norfolk, it is proper to say that they constitute in reality one port, served from the west principally by the Chesapeake & Ohio and Norfolk & Western railways. It does not here appear that they are included in the differential agreement; but it is the established policy of the roads serving those ports to maintain there the same rates that are contemporaneously maintained at Baltimore. It is also appropriate to say that the carriers between the differential territory and the Gulf ports compete with the carriers to the Atlantic ports for import and export traffic and that it is their established policy to maintain rates to and from the Gulf ports which bear a definite relationship to the rates to and from the Atlantic ports and which take into consideration the more expensive ocean service to and from the Gulf ports.

The import and export traffic through the port of Montreal has increased largely in recent years, more especially with regard to the export of grain and grain products.

The ex-lake differentials are of prime importance in the movement of grain which is concentrated at the ports on Lake Superior and Lake Michigan and carried thence by water to Buffalo, Erie, Fairport, and other eastern lake ports, from whence it moves to the Atlantic ports by rail on rates that are wholly independent of the lake charges.

About 1891 the railroads began to compete with the Erie Canal for this traffic, and in 1893 the question of differentials on ex-lake shipments arose. Certain of the New York lines entered into a joint agreement to make certain rates on this traffic regardless of canal competition, and a separate agreement was made which accorded differentials of one-half cent and three-quarters of a cent per bushel to Philadelphia and Baltimore, respectively, on shipments from Buffalo. In 1894 these differentials were reduced to one-half cent per bushel to both Philadelphia and Baltimore. In 1895 the railroad agreements were overthrown and the railroads entered into spirited competition with the canal. From time to time rate wars occurred which were temporarily composed by agreements and arbitrations. Every effort

made to maintain equal ex-lake rates to the several Atlantic ports failed.

In the *North Atlantic Ports case, supra*, the Commission found that Philadelphia and Baltimore should be accorded a differential of three-tenths of a cent per bushel on ex-lake grain, which opinion was shortly thereafter modified by making the differential on ex-lake oats and barley one-sixth of a cent per bushel.

Complainants allege violation of section 1 of the act in that the rates to and from New York are unjust and unreasonable. They say that the lower grades on the New York Central lines make the transportation cheaper than to Philadelphia or Baltimore via the lines which cross the Alleghenies, and from this they argue that the rates to and from New York are unreasonable *per se*. This is answered by defendants in a general way by saying that any difference in cost of transportation due to the grades is fully or more than offset by the difference in cost of fuel which lies in abundance along their rights of way. No evidence has been presented which in any wise lays a foundation for a finding that any particular rate is unreasonable *per se*.

Violation of section 2 of the act is alleged in that that section prohibits charging one person more or less than another person for the transportation of a like kind of traffic under substantially similar circumstances and conditions. We shall later consider whether or not the transportation is under substantially similar circumstances and conditions.

Violation of section 3 of the act is alleged in that the differential adjustment gives an undue preference to Boston, Philadelphia, and Baltimore and subjects New York to unreasonable prejudice or disadvantage. This will be referred to later.

Violation of section 4 of the act is alleged, but as has been seen the rates at issue are those applicable on export and import traffic, and, while the record is not clear and specific on that point, it is not our understanding that this traffic is hauled to or from Baltimore or Philadelphia via any line as to which New York is directly intermediate. Some of it may move through New York to or from Boston, but the amount so hauled must be small.

The rates to and from differential territory are established in zones substantially on distance. It frequently occurs that a circuitous route hauls traffic through a zone which takes higher rates than that in which the point of origin or destination is located. This, however, applies to shipments to and from New York as well as to and from the other ports. This situation is protected by applications for relief from the provisions of the fourth section and is not here passed upon.

Complainants contend that in exercising the power vested in the Commission to prescribe just and reasonable and nondiscriminatory



rates it must be controlled by the constitutional provision that in the regulation of commerce no preference shall be given to the ports of one State over those of another. They argue that New York has numerous advantages of location, harbor facilities, steamship sailings, market, etc., the benefit of which is in some degree taken from it by the differential rates, and that the maintenance of lower rates to the other ports is unlawful under the act to regulate commerce and in violation of the constitution of the United States.

If one railroad may not make lower rates to a given port than another railroad makes to another port in another state without violating the constitution of the United States it would seem necessarily to follow that railroad rates must be the same from a given point to every port in every state, regardless of distance, extent and termini of carriers' lines, cost or value of the service, and of the discriminations which would be thereby created. One city or state prescribes certain harbor dues and charges, while another city or state elects to furnish harbor facilities free. All such considerations determine in some measure the attractiveness of the port to shipping and yet so far as we know it has never been held that the exercise of those rights by municipalities or states is unconstitutional.

Complainants aver that any excess in the rates on export and import traffic to and from the differential territory over that charged from and to Baltimore, Philadelphia, or Boston is imposed for the purpose of diverting traffic from New York to these other ports; or, in other words, for the purpose of making a fair division of the traffic as between the railroads and the ports and constitutes an unlawful additional charge for the sole purpose of discriminating against New York. The record in the *North Atlantic Ports case, supra*, is stipulated into this record, and it there appears that former officers of some of the New York roads testified that they would be glad to transport this traffic to and from New York at as low rates as were contemporaneously applied to and from Baltimore if they could do so. This meant that they would be glad to put New York on a parity with Baltimore if the roads serving Baltimore would maintain as high rates to Baltimore as were thus established at New York. The New York commercial interests contend that the New York rates should be reduced to the Baltimore basis and that the New York roads are willing and anxious to so reduce them. The testimony above referred to was given several years ago. No present responsible officers of the New York roads so testify, and in the light of present-day conditions, as shown in *In re Investigation of Advances in Rates*, 20 I. C. C., 243, we can not say that we have here any clear expression of such desire.

As has been seen, the differentials are the result of compromise, arbitration, and agreement, resorted to as the only means so far found of

averting rate wars. The railroads serving Boston have insisted at all times that the export and import rates to and from Boston should not exceed those to and from New York. The railroads serving Philadelphia and Baltimore have always insisted that the rates on this traffic from and to those ports should be lower than those contemporaneously maintained from and to New York.

The roads serving Baltimore and Philadelphia, as well as the commercial interests of those cities, aver that the differentials might lawfully and reasonably be, and in fact ought to be, wider than they are, and that to maintain them at as low figures as now obtain has the effect of giving New York an advantage to which it is not entitled on any ground except the adoption of this means of averting rate wars.

The Baltimore & Ohio Railroad denies that it should or may be required to sacrifice its legitimate revenues by furnishing a service to and from New York at the same rates it receives for its service to and from Baltimore. It shows that its lighterage and other terminal services in New York cost it substantially more than the present allowance it receives for that service out of the joint rates. On this account it shows a deficit for the years 1909-10-11 of more than \$1,250,000.

This defendant suggests that before the railroads were subject to regulation the control of a large volume of traffic was a potent influence in securing low rates from railroads; that New York being the largest and strongest port, served by strong railroad lines, this wholesale principle worked steadily in New York's favor, and the rates to and from New York became more and more favorable as compared with other and less influential ports, which gave New York an advantage which it still holds; that, recognizing the long-established status and the business interests that had adjusted themselves thereto, the differentials were substituted for the differences in rates that might otherwise have been established, as some recognition of the substantial rights of the other ports. It replies to New York's allegations that the differentials penalized New York for her advantages by saying that the arbitrary differentials are merely substitutes for the more substantial and logical differences in favor of Philadelphia and Baltimore which would naturally exist, and that they are established not for the purpose of diverting traffic from New York but as a limitation upon the arrangement which New York had secured for diverting traffic from Baltimore and Philadelphia, and in an effort to prevent New York from acquiring all.

The Boston interests assert that the Boston railroads are entitled by law and that it is their duty to meet the lowest export and import rates offered via any of the ports here considered, and in this position the Boston & Maine Railroad concurs. Boston asks, therefore, an order or an expression of opinion from the Commission to the effect



that the inland rates on import and export traffic from and to the ports of Boston, Philadelphia, and Baltimore should be the same, and that they should be lower than like rates to and from New York to the extent of the present differentials at Baltimore. They state that it is conclusively shown that Boston can not live commercially without equal inland export and import rates with Baltimore. They ask "the boon of free competition" in order that Boston may secure an equitable share of the export and import traffic. It is somewhat difficult to see how the fixing of arbitrary and artificial differentials can be tantamount to "the boon of free competition."

They call attention to the long list of natural and acquired advantages existing at the port of New York, and from it argue that if Boston is deprived of its advantage of lower ocean and through rates it can not compete on even terms with New York any more than can Philadelphia or Baltimore. The advantages referred to are, a natural port, unlimited capacity for future development, the Erie Canal, fast and frequent steamship service, option market, guarantee of quality of export flour, banking facilities, credit market, ocean rates, and numerous established commercial and trade connections with foreign countries. Not doubting that New York has all of these advantages we inquire, Which of them has not come as a gift of Nature or as a result of judicious investment or commercial enterprise? And which if any of them may, as a matter of law, be taken from New York or nullified by arbitrary rail rate adjustments that are not founded in reasonableness measured by the recognized standards, and the absence of unjust discrimination?

It is urged that the cost of delivering export traffic to and taking import traffic from the steamships at New York, which is borne by the railroads, is materially greater than at Boston, and that therefore the rates to and from Boston should be less than to and from New York. This suggestion seems to ignore the probable fact that the cost of the additional haul to and from Boston would perhaps offset and perhaps exceed the additional terminal cost at New York.

It is said that Baltimore and Philadelphia have a tremendous advantage over Boston in the exportation of grain raised in the states nearby to Baltimore and Philadelphia. Is this an advantage of which Philadelphia or Baltimore may lawfully or justly be deprived by rate adjustments?

It is urged that the all-rail differentials applying at Baltimore and Philadelphia, which are greater than the ex-lake differentials, give Philadelphia and Baltimore a practical monopoly of the all-rail export grain as against Boston. It is to be noted, however, that substantially all of the all-rail export grain reaching Philadelphia and Baltimore is transported from points of origin or from primary



markets over the Pennsylvania and Baltimore & Ohio systems, neither of which reaches Boston.

Boston suggests that New York had little to say as to diversion of export traffic from New York to Boston "for the very good reason that the inland export rates are the same to the two ports," and that on equal export rates, inland and ocean, New York "is cutting the ground from under Boston." It is difficult to see how any unjust discrimination against Boston can be found in an adjustment which for a substantially longer rail haul gives it the same rates as New York, and it is equally difficult to see upon what basis we would find that Boston is entitled to lower inland rates on traffic to or from differential territory than is New York.

It is said that under equal inland rates to New York and Boston any change in the relative movement of this traffic caused by change in the ocean rates simply manifests the need of the steamship lines which have lines common to both ports for the particular traffic at the respective ports. Manifestly this is so and it ought to be so, and in a modified degree it is true where differentials exist, for the ocean rates to and from the differential ports are fluctuated in order to accommodate the needs and wishes of the steamship lines. Each of the ports contends that its traffic is "diverted" to one or more of the other ports, but inasmuch as no fixed proportion of the traffic has been assigned to any port and as the records show that the percentages of traffic moving through the different ports varies from year to year and from period to period, it would seem more accurate to say that the rate adjustments are made for the purpose of attracting traffic to the several ports.

In recent years certain steamship lines have arranged their sailings so that their vessels land at Boston or Philadelphia on the westward voyage and proceed thence to Baltimore to leave part of their cargo and to secure cargo for the eastward voyage. The exportations of grain from Baltimore have greatly increased in recent years. It may be that this is to some extent due to the differential rates, but to some extent it is because of attractive port facilities for the handling of that traffic, and in part it comes from the large quantities of near-by grain which could not under any reasonable rate adjustment find outlet through the other ports.

Boston experiences some difficulty in getting steamers to come there with imports which it needs because the vessels are unable to there secure eastbound lading. But it can not be that in law the duty devolves upon the railroads to so adjust their rates as to equalize those conditions, or that it is within the reasonable and proper exercise of the powers of this Commission to require such adjustments. If certain imports would naturally move to Boston and certain

exports would naturally move from Baltimore, why should the railroads or this Commission so adjust the rail rates as to equally divide that tonnage and insure equal steamship sailings to and from those ports?

Of the imports through Boston only 22 per cent are for differential territory. A large portion of the export tonnage through New York moves to foreign ports to which steamship lines have direct sailings from New York and no sailings from the other ports.

As we have seen, Baltimore and Philadelphia export large quantities of grain grown in territory tributary to those ports and the surplus of such crops or the attractiveness of the export market for them would necessarily affect that movement from year to year. It appears that dissatisfaction of exporters with the inspection at a certain market may and does affect the exportations from that port.

Looking at the geography of the principal railroads serving these several ports, we find that the New York Central lines constitute a system which reaches many of the important commercial centers in the differential territory, with termini at New York, Boston, Chicago, and St. Louis. Traffic moving to and from Boston via this system would not move through New York, but would go via Albany and the Boston & Albany line. The Boston & Maine Railroad has lines west and north from Boston and connects with the Canadian Pacific, which has its own line to Detroit; with the Grand Trunk, which has its own line to Chicago and other important centers in differential territory; and with the New York Central and other lines at or near Albany. The Lehigh Valley has a line from Buffalo to New York and reaches Philadelphia in connection with the Philadelphia & Reading. The Delaware, Lackawanna & Western has a line from Buffalo to New York and has connections with the Pennsylvania Railroad to Philadelphia and to Baltimore. The Erie Railroad has a line from Chicago and other important centers in differential territory to Buffalo and to New York. The Pennsylvania Railroad, with its allied lines, has main lines from Chicago, St. Louis, and many other important points in differential territory to Baltimore, Philadelphia, and New York. Its line from the west to New York passes through Philadelphia. It has lines to Buffalo, Erie, and Cleveland, on Lake Erie, and traffic moved by it between those ports and New York goes via Philadelphia. The Baltimore & Ohio system has lines from Chicago, St. Louis, and many other important places in differential territory through Baltimore to Philadelphia. By arrangement with the Philadelphia & Reading and the Central of New Jersey its through route is extended from Philadelphia to New York, at which point the Baltimore & Ohio has and operates its own terminal facilities. This system reaches Toledo, Sandusky, Lorain, Cleveland, and Fairport, on Lake Erie.



Every railroad desires to get the longest possible haul on the traffic which it transports, and therefore the Boston & Maine, the Grand Trunk, and the Canadian Pacific naturally prefer to see the traffic move through Boston. The New York Central, the Lackawanna, the Lehigh Valley, and the Erie prefer to see it move through New York. Philadelphia is the home city of the Pennsylvania system and it is to its interests to have the traffic move through Philadelphia. Baltimore is the home city of the Baltimore & Ohio system and it is to its interests to see the traffic move through Baltimore. The haul via the Pennsylvania system is substantially the same to Philadelphia and to Baltimore and is some 90 miles greater to New York than to Philadelphia. The haul via the Baltimore & Ohio system is 90 miles farther to Philadelphia than to Baltimore and 186 miles farther to New York than to Baltimore. As stated, these systems assert their right to charge more for the longer haul and the extra service. In addition to this the Baltimore & Ohio shows that its earnings on a shipment to or from Baltimore are greater than on the same shipment to or from New York, due to the fact that on the New York business it must divide the earnings with its connections and must perform a substantially more expensive terminal service.

The traffic being that which moves to and from recognized competitive territory, all of the carriers that are in a position to do so join with their connections in moving such of it as they can secure to any and all of the ports under the so-called differential rates. The carriers whose lines reach the points of origin and destination of this traffic and all of their connections compete for it, and, in so far as the differential adjustment is observed, distance is largely disregarded.

As a matter of fact the differential adjustment is not adhered to. This is evidenced by the facts developed in *Federal Sugar Refining Co. v. B. & O. R. R. Co.*, 17 I. C. C., 40, and by the fact, incidentally brought out in this case and investigated from the records of the carriers by examiners of the Commission, that upon eight cargoes of agricultural implements exported through Baltimore between Jan. 1 and April 1, 1911, the delivering line at Baltimore and its connections paid the agent of the shippers approximately \$35,000 allowance "in lieu of lighterage and floatage," when in fact no such service was performed as to any of the tonnage making up those cargoes. The allowance was made on the strength of a tariff of the terminal line at Baltimore which applied only at Baltimore and the existence of which was not generally known.

Complainants urge that the present proceeding differs from previous proceedings affecting the same issues in that now the Commission has been vested with rate-making power and must determine the inherent reasonableness of the rates in question.



A mass of statistics have been filed by the parties, each arguing from its statistics the conclusions which it thinks should be reached. Complainants say: "The statistics and the testimony relating to the movement of traffic are all immaterial except as they may have a bearing upon the historical facts relating to the origin and purpose of the differentials." Many of these statistical tables are of value only to that extent, for the reason that they are not confined to and do not assume to differentiate the traffic to which the differential import and export rates apply. There is a heavy movement of import and export traffic through the several ports which has destination or origin at the ports or at points not situated in the differential territory. In making the differential agreement it was apparently conceded that the territory east of the Buffalo-Pittsburgh line was largely noncompetitive, and that the import and export traffic having destination and origin therein would and should find its way to the natural or most convenient port. Numerous statistical tables measure the relationship of the ports and the effect of the rate adjustments upon the movement of traffic by showing the value of the imports or exports. Manifestly, such statistics, which include the value of precious stones, metal, bullion, and perhaps money, are of no help in determining the question here presented.

One exhibit shows that of the total movement of import traffic through the four ports, New York secured for the period 1909 to 1911, inclusive, 39.6 per cent, as compared with 31.1 per cent for the period 1906 to 1908, inclusive. The percentages of the other ports for the same periods, respectively, were: Philadelphia 19.1, 20.4; Baltimore 28.1, 34.4; Boston 13.2, 14.1. The total increase in tonnage was 815,098 tons, of which New York secured 513,868 tons.

Another exhibit shows that of the import traffic in tons to differential territory for 1911, New York secured 58.4 per cent of that which moved under class rates and 28 per cent of that which moved under commodity rates; Philadelphia secured 15.4 per cent under the classes and 24 per cent under the commodity rates; Baltimore 18.1 per cent under the classes and 32 per cent under the commodity rates; and Boston 8.1 per cent under the classes and 16 per cent under the commodity rates.

On an exhibit it appears that of the exports of wheat, corn, and oats, New York secured in 1899, 25 per cent; in 1905, 25.8 per cent; in 1911, 24.4 per cent. Its highest percentage was 27.5 in 1907, and its lowest 16.9 in 1910. During the same period Philadelphia had 12.3 per cent in 1899; 8.6 per cent in 1905; 10.8 per cent in 1911. Its highest percentage was 15.7 in 1900, and its lowest 7.5 in 1903. Baltimore had 17.4 per cent in 1899; 13 per cent in 1905; 14.6 per cent in 1911. Its highest percentage was 17.6 in 1901 and its lowest 8.6 in 1909.

Boston had 10.2 per cent in 1899; 10.5 per cent in 1905; 11.3 per cent in 1911. Its highest percentage was 12.3 in 1901 and its lowest 7.5 in 1903.

It is thus seen that while the percentages of the several ports have fluctuated widely from year to year the differences between 1899 and 1911 are not striking. Each of the ports has a slightly smaller percentage excepting Boston, which increased 1 per cent.

During the same period the percentages of export flour secured by the several ports are stated to have been as follows: New York, in 1899, 28.4; in 1905, 36.4; in 1911, 36.4. Its highest percentage was 36.4, in 1905 and again in 1911, and its lowest 26.3, in 1901. Philadelphia had 14.1 per cent in 1899, 16 per cent in 1905, 10.7 per cent in 1911. Its highest percentage was 22.2, in 1907, and its lowest 10.7, in 1911. Baltimore had 20.8 per cent in 1899, 15.2 per cent in 1905, 9.9 per cent in 1911. Its highest percentage was 21.8, in 1903, and its lowest 9.3, in 1910. Boston had 10.1 per cent in 1899, 6.2 per cent in 1905, 6.2 per cent in 1911. Its highest percentage was 10.4, in 1900, and its lowest 5.1, in 1903.

On this traffic it appears that New York has made a substantial gain, while the other ports have lost, the greatest loss being experienced by Baltimore.

Another exhibit purporting to show the exports of flour through those ports for the years 1906 to 1911, inclusive, shows that in 1906 New York had 42 per cent and in 1911, 60.4 per cent; that in 1906 Boston had 10 per cent and in 1911, 6.4 per cent; that in 1906 Philadelphia had 27 per cent and in 1911, 16.7 per cent; that Baltimore had 21 per cent in 1906 and 16.5 per cent in 1911.

The differences in the percentages shown in these exhibits emphasize the difficulty of basing any conclusion upon the statistics, even if they were controlling. It was suggested before the hearing was had that the contending parties get together and agree upon a uniform basis and method of preparing the statistics, but that suggestion was not acceptable and each party has prepared its own from such sources and authorities and in such manner as it elected.

Another exhibit shows that of the tonnage of export flour and grain products moving lake-and-rail for the years 1909 and 1910 New York secured 33 per cent, Boston 9 per cent, Philadelphia 28 per cent, and Baltimore 30 per cent.

From this it would appear that this tonnage moved in quite equal volume to the ports of New York, Philadelphia, and Baltimore. Obviously it would require some unusual condition or some strong inducement to attract this business to Boston, especially in view of the fact that the main trunk lines reaching Baltimore and Philadelphia and New York have their own boats on the lakes.



Another exhibit shows the movement in bushels of export Canadian breadstuffs in bond for the period 1904-1909 and 1910-1911. In the first period Boston secured 6,800,000 and in the second period 8,200,000; Philadelphia secured for the two periods respectively 1,900,000 and 5,400,000; Baltimore, 460,000 and 2,020,000; New York, 5,600,000 and 11,400,000.

From this it is argued that Boston secured an increase of 20.5 per cent, while the others secured increases in much larger percentages, but it is seen that although Boston had increased in the second period over the first 20.5 per cent and Baltimore 333 per cent, Boston had for the second period 8,200,000 bushels, as compared with Baltimore's 2,020,000, and that, although Philadelphia had increased 184 per cent, it had for the second period but 5,400,000 bushels.

An exhibit stating the percentage of tonnage of west-bound import freight destined to and beyond the western termini of the trunk lines, which, generally speaking, means Buffalo, Pittsburgh, and beyond, shows that in 1905 Boston had 9 per cent and in 1910, 13.1 per cent; that in 1905 New York had 34 per cent and in 1910, 36.1 per cent; that in 1905 Philadelphia had 16.4 per cent and in 1910, 18.2 per cent; and that in 1905 Baltimore had 31.2 per cent and in 1910, 26.1 per cent.

The original agreement for differentials was based on the fact that the ocean rates for freights to and from foreign markets were less from and to New York than from and to the other ports, and the effort was to equalize the entire through charge via the several ports.

Where there is steamship competition between two or more of our ports and the same foreign destination, the ocean freights are higher to and from Boston, Philadelphia, and Baltimore than to and from New York. It appears that the steamship lines plying from Boston, Philadelphia, and Baltimore absorb or "get" as much of the differential inland rate as possible in their higher ocean rates. But this has the effect of giving these ports ocean service which otherwise they would not have.

It appears that full cargo rates are now the same from all of the ports, but that substantially no full cargo business is done except at Baltimore and Philadelphia. In some instances full cargoes are moved by independent tramp vessels, and in some instances by tramp vessels that have been employed by regular lines to move tonnage which they can not accommodate in their regular boats. Some contend that the ocean rates are known and stable quantities. But that contention is, we think, overcome by a preponderance of testimony in this and other proceedings, and by the fact that one important ocean freight-carrying line in declining to comply with a request for



copies of its schedules of rates, stated that they were not tariffs in the sense that they would or could be maintained. The ocean rates fluctuate according to the spare room available as the time approaches when the vessel must sail. The lines sailing from Baltimore and Philadelphia know that the inland rates are lower to and from those ports than to and from New York, and that therefore they can get higher ocean rates at the outports. In other words, the differentials to some extent operate as a bonus to the ocean carriers to bring traffic to and seek traffic at the ports where the lower inland rates apply. But it is contended that the ocean haul is longer to and from the out-ports than to and from New York, and that therefore the ships will not serve the out-ports unless they can get somewhat higher rates there. It was testified in the 1905 proceeding and again in this record that it costs less to load boats at Baltimore and Philadelphia than in New York. Some witnesses say that, all things considered, the ocean transportation is less to and from the out-ports than to and from New York. Others, however, contradict this.

Representatives of the contending ports show elaborately their several natural and acquired advantages, the improvements that have been made and that are in contemplation, the number of ocean lines plying to and from the ports, and the number of sailings. The out-ports argue that the differentials are essential to their existence as import and export ports, and that if the differentials are not preserved the only part of this traffic which they can secure will be that which New York is physically unable to handle. New York's representatives say that the state and city have expended large sums of money to improve the harbor and enlarge its facilities and that the arbitrary differentials against New York and in favor of the other ports counteract or largely nullify the benefits which they ought to reap from those efforts and expenditures.

The fact that the United States government has done much to improve these various waterways and harbors is referred to, from which it is only reasonable to infer that it is the policy of the government to have these several ports available and to encourage traffic through them. It is too well established to admit of further argument that neither the railroads nor the Commission may adjust rates in such way as to deprive a place of its natural advantages or give it artificial advantages which are withheld from a competitor. If this is true as to natural advantages, it must be doubly true as to advantages acquired through enterprise and investment.

Complainants allege that higher rates are imposed to and from New York to offset New York's advantages. Representatives of Baltimore and Philadelphia say that it is not the maintenance of higher rates at New York, but the maintenance of lower rates at Philadelphia

and Baltimore, to which they are entitled by their geographical position. Whether we say that higher rates are maintained at New York or that lower rates are maintained at Baltimore and Philadelphia we reach the same result. The difference between the rates is the same.

Reference is made to an option market in New York as one of its advantages, and the absence of such market at the other ports as one of their disadvantages, which justify the differences in the rates. We do not think that the existence of an option market at one place and the absence of it at another place is a proper consideration in the relative adjustment of rates.

The short line from Buffalo to New York is 398 miles, to Philadelphia 416 miles, and to Baltimore 396 miles. From Buffalo to these three ports there is no substantial difference in distance. The short line from Erie to Baltimore is 424 miles, and to Philadelphia it is 436 miles; from Fairport to Baltimore it is 454 miles, and to Philadelphia 473 miles. Erie is a Lake port served principally by the Pennsylvania system and Fairport is served principally by the Baltimore & Ohio system, and, as has been seen, the traffic via either of these systems from Erie or from Fairport to New York passes through Baltimore or Philadelphia or both.

Complainants ask what can justify the Commission prescribing greater through rates on traffic that moves between Chicago and Buffalo by steamer and between Buffalo and New York by rail than upon the same traffic between Chicago and Philadelphia or Baltimore by lake-and-rail via the other lake ports, aside from supporting the all-rail differentials in the effort to parcel out a division of the traffic between the several ports?

While the rail haul from Erie or Fairport to the Atlantic ports is greater than from Buffalo the lake haul to Erie or Fairport is correspondingly less than to Buffalo. This question can not be determined upon the basis of distance alone. If it were, Baltimore would be given more advantage than it now has. The interests of all concerned and the matter of lawful and controlling competition must, as will appear, be considered.

The great bulk of the high-class tonnage moves through the port of New York, and that moving through the other ports is largely the heavier low-grade commodities, such as grain, flour, ores, burlap, coal, etc. It appears both in the previous record and in this that a small difference in the freight charges on grain determine the port or market to which it will go and affect the price of the grain. A New York grain exporter testified that he could not export from New York in competition with Baltimore. When asked by counsel for Baltimore interests why in that case he did not ship from Baltimore, he replied, referring to a rule of the Baltimore Board of Trade which



imposes a penalty upon shipments made by others than the members of that board:

Because we can not ship from Baltimore and pay you gentlemen down there a commission for handling our grain.

Apparently the steamship companies prefer to handle the heavy traffic through Baltimore or Philadelphia, and they adjust their rates with that in view. To some degree, at least, the inland differentials contribute to that result. In 1881 Mr. Albert Fink, then commissioner of the trunk lines, stated in a report on this subject:

Whether the differentials are maintained or not free ocean competition acts at least in a great measure as an equalizer of the through rates.

If this is not true, manifestly it ought to be. And if the inland rates are free from artificial adjustment the steamship lines must compete on the ocean.

Witnesses testify that generally ocean rates from foreign ports to Boston, Philadelphia, and Baltimore are lower than to New York, and that the ocean rates from the various ports to a given foreign port are such as, in some instances, make it impossible to move the traffic through New York. It seems that rates from foreign destinations to the out-ports are generally so much per 100 pounds, while to New York they are on a measurement or space basis, which makes an exact comparison difficult, if not impossible. In many instances the ocean rates from the out-ports are lower than from New York, although in other instances they are higher. One witness testifies "last year as well as this year the steamship lines from the United Kingdom have made the same rates to New York as to the out-ports in most cases." It appears that whenever there is a readjustment of the inland rates the steamship lines take up the shrinkage by adjusting their rates to and from the several ports.

In January, 1902, a number of the ocean carriers entered into a minimum freight agreement not to contract for carriage by steamships under their control any shipments of the commodities named in the agreement from the United States or Canada to ports in Great Britain or Ireland at lower rates of freight than those specified, and that they would not make or allow made any rebate to shippers or consignees. This agreement was made in Liverpool and gave no recognition to the inland freight differentials in the United States. It was to stand for 14 days, at which time any party thereto might withdraw, and such withdrawal would release the others.

In March, 1902, the parties to the agreement resolved that the benefits of the minimum rates should be maintained, but that owing to differentials on inland rates, insurance rates, differences in steamer hauls, etc., it was desirable to elaborate and revise the agreement,



and a committee was appointed for that purpose. This committee reported about a month later, and a majority were in favor of adjustment of ocean rates by taking the inland differentials into account.

We pause here to remark that the adjustment of inland differentials to compensate the ocean disabilities, followed by an adjustment of ocean rates which takes into consideration the inland differentials, would constitute an endless chain or be tantamount to moving about in a circle.

In May, 1902, a report of the committee was adopted which fixed certain minimum ocean rates on a number of commodities. The various ports were grouped together under the same rates as follows: New York, Boston, and Portland; Montreal, Quebec, and Philadelphia; Baltimore and Newport News. This schedule was to stand for a trial period of 3 weeks, and was afterwards extended subject to 14 days' notice of withdrawal. In June, 1902, withdrawal of certain commodities and traffic began, and in an effort to preserve the agreement the committee in July recommended concessions on certain commodities to the ports of Philadelphia and Baltimore which amounted to about one-half of the inland differentials to those ports. Thereupon notice of withdrawal from the agreement was recalled.

In July, 1903, on a request that the steamship lines from Philadelphia, Baltimore, and Newport News advance their rates to equalize through rates with Boston, it was agreed that the minimum ocean rates on flour to Liverpool originating in differential territory should be: From Boston, New York, and Portland, 8.44; from Quebec and Montreal, 10.44; from Philadelphia, Baltimore, and Newport News, 9.44. For September shipments the rates were to be: From New York, 8.44; from Philadelphia, 9.44; from Baltimore, 9.94.

The effort to maintain any permanent agreement among the ocean lines appears to have failed because of the insistence of one of the Baltimore lines upon lower rates from and to Baltimore.

The territory contiguous or local to the several ports would afford each of them control of more or less of the export and import traffic, and in the competitive territory much of the traffic is so controlled by the originating or delivering lines that it would naturally move to such port as they prefer. One importer testified that he had found the service through Baltimore more satisfactory and that even on equal rates he would not use the port of New York. Each port has certain attractions for particular classes of traffic, and it appears that the heavier commodities can be handled more economically and expeditiously at some of the out-ports than at New York. Ocean-going steamers can be loaded with grain directly from the elevators at Baltimore. A great part, if not all, of the traffic has to be lightered at New York.

The Baltimore interests assert that in the former hearing it was shown that Baltimore was the only one of these ports that was on a natural rate adjustment, inasmuch as the domestic rates and the inland rates on export traffic through Baltimore were the same, while at the other ports the export rates were lower than the domestic rates, and that from this it follows, as appeared in the former hearing, that the export rates to Baltimore can not be advanced without at the same time advancing the domestic rates.

Under the tariffs now in effect the domestic and export all-rail class rates from Chicago are the same, respectively, to New York, Philadelphia, and Baltimore, and the export rates to Boston are lower than the domestic rates. The export rates on grain are lower than on domestic shipments to the several ports as follows: Boston, 5 cents; New York, 3 cents; Philadelphia, 2 cents; Baltimore,  $1\frac{1}{2}$  cents.

In the former hearing the Commission found that the cost of delivering grain into the hold of a ship from the average point of origin was approximately 3 cents less at Baltimore than at New York. The differential in favor of Baltimore is  $1\frac{1}{2}$  cents.

It is clear that the differential agreement was originally made in an attempt to equalize the total charges on import and export traffic through the several ports, as gateways. We have no jurisdiction of the ocean rates and must deal with this question as though the ports were destinations instead of gateways. This does not mean that the carriers may not take into consideration the previous or further transportation of the traffic on the ocean and thus differentiate it, reasonably, from domestic traffic, but the rates to and from the ports must be reasonable, must be published as independent from the ocean transportation, and are subject to all of the provisions of the act. *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.*, 13 I. C. C., 266; *Armour Packing Co. v. U. S.*, 209 U. S., 56. It is our duty to see that shippers are accorded reasonable rates and that undue discrimination is not practiced against shippers, commodities, or communities. It is also our duty to consider the interests of all of the shippers and communities affected and to refrain from condemning discriminations which are not unjust. Much weight has always been given to rate adjustments of long standing to which commercial conditions have adjusted themselves; and in this connection it is to be noted that Baltimore and Philadelphia have had lower rates than New York for more than 40 years.

Each railroad was originally constructed to reach certain points and to serve certain territories, and they have expanded by construction, purchase, and lease of other lines as it has seemed to their interests to do. Each of them owes a duty to the entire public and each of them owes a peculiar duty to the persons and communities



which it directly serves and which are dependent upon it. In addition to serving the places and territories directly reached by it, each system endeavors to increase its total revenues by securing as much competitive traffic as is possible.

It is urged that Boston is as dependent as is Philadelphia or Baltimore upon the differential territory for its exports and imports, and the Boston interests join in the contention that the railroads should so adjust their rates as to insure movement of a certain or substantial part of the traffic through those ports. Neither the carriers nor the Commission has any right to undertake to so apportion the traffic between rival ports or cities. While recognizing the right of the carriers to conserve the interests of the ports and territories served by them, we can not consider the carriers as one great and single system. *In Re Advances in Coal Rates by the Chesapeake & Ohio Ry. Co.*, 22 I. C. C., 604.

The Baltimore & Ohio and the Pennsylvania systems, reaching by their own lines so many of the important commercial centers in the middle west and so many of the lake ports and having their own boats on the lakes and hauling all of their New York traffic through either Philadelphia or Baltimore or both, control the rate situation between the territory here considered and Baltimore and Philadelphia. The competitive conditions at Baltimore and Philadelphia are created by these systems, and the rate situation to and from those ports is controlled by them. It was this control by these systems that led to the making of the differential agreement. We do not recognize such an agreement as lawful, but the conditions which brought it about are as strong to-day as they ever were and we find now, as we found in the *North Atlantic Ports case, supra*, that the Pennsylvania and the Baltimore & Ohio have the lawful right to maintain lower rates to and from Baltimore and Philadelphia than they contemporaneously maintain to and from New York. They would probably also have the right to make these rates the same to and from all of those ports if they chose to do so.

The Boston lines have an undoubted right to make such rates to and from Boston as their interests demand, subject only to the limitations that the rates must be reasonable; that they may not carry that traffic at less than the cost of the service and so unduly burden other traffic, and may not unjustly discriminate against other points which they serve or in whose traffic they participate. The New York Central and the Erie, having their own lines from Chicago and Buffalo to New York and no lines to Philadelphia, Baltimore, or Boston, have a right to make their rates to and from New York as they choose, subject to the same limitations. The Lehigh Valley and the Lackawanna directly serve New York, and, through established con-



nections, serve also Philadelphia and Baltimore. They, of course, may not unjustly discriminate against either of these ports.

If the New York lines and other connections of the Baltimore & Ohio and the Pennsylvania systems participate in the haul of traffic to and from Philadelphia or Baltimore, they must do so under the competitive conditions created by the Baltimore & Ohio and the Pennsylvania at Baltimore and Philadelphia which the other lines are unable to control, and under these conditions we do not think it unlawful if they participate in the movement of traffic to and from Philadelphia and Baltimore under competitive rates even though at the same time they maintain higher rates to and from New York. *Railroad Commission of Kansas v. A., T. & S. F. Ry. Co.*, 22 I. C. C., 407; *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 23 I. C. C., 195.

As to lake and rail traffic through Buffalo and ex-lake traffic from Buffalo, the distance and the service via the short lines is substantially the same to Baltimore and to New York, but if the New York lines were to withdraw from participation in that traffic to and from Baltimore or Philadelphia, it could and doubtless would move in the same volume via the other lines, and, in any event, that which reaches Buffalo must move there in competition with the other lake ports, such as Erie, Fairport, etc.

The theory of the law is that carriers shall establish and maintain through routes and joint rates so that there may be the freest movement of traffic without the necessity of reshipment. In the formation of these through routes, however, the law recognizes the right of a carrier to protect its own long haul, and a carrier may not be required against its will to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be created. The law also recognizes the right of the shipper to dictate the intermediate routing of his shipments over available through routes. We therefore think that it is not unlawful and not unjustly discriminatory against New York for the carriers which serve it to participate in the competitive traffic to Philadelphia and Baltimore at the lower rates fixed at those points by the carriers whose lines control those situations.

As before stated we neither recognize nor consider the differential agreement as lawful. The law contemplates free competition and condemns any combination which restrains such competition. We repeat that defendants Baltimore & Ohio and Pennsylvania systems have a lawful right to maintain lower rates between this differential territory and Baltimore and Philadelphia than they contemporaneously maintain to and from New York. The New York lines and

their connections have a right to meet the competition so created at Philadelphia and Baltimore and which is beyond their control, while at the same time maintaining higher rates to and from New York. We think that as to this traffic, it would not be unjustly discriminatory for defendants to maintain the same rates to and from New York and Boston. We are not to be understood as holding that the present rate adjustment will for all time or for any particular period of time be just and reasonable, but we can not find that reasonable differences in rates as between Philadelphia and Baltimore on the one hand and New York on the other hand unjustly discriminate against New York. We find no justification for lower rates to and from Boston than to and from New York.

We are of the opinion:

(a) That differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadelphia should not exceed 2 cents per 100 pounds, on the classes and on commodities other than grain. On all-rail and lake-and-rail export shipments of grain the differentials under New York should not exceed 1.5 cents per 100 pounds to Baltimore, and 1 cent per 100 pounds to Philadelphia.

(b) That as to all of this traffic the export rates to Boston should not be lower than to New York.

(c) That the differentials under New York from Buffalo, N. Y., Erie, Pa., and West Fairport, Ohio, to Baltimore and Philadelphia on ex-lake grain from differential territory for export should not exceed 0.2 of a cent per bushel on barley and oats, and 0.3 of a cent per bushel on wheat, corn, and rye.

(d) That differentials under New York on import traffic, all-rail and lake-and-rail, from Philadelphia and Baltimore to differential territory should be no greater than those which existed in the latter part of 1908, to wit, in cents per 100 pounds:

Classes.....	1	2	3	4	5	6	Commodities
Philadelphia differentials.....	6	6	2	2	2	2	2
Baltimore differentials.....	8	8	3	3	3	3	3

And that the import rates from Boston should not be lower than from New York.

On the understandings and submission filed in *In the Matter of Import Rates*, 24 I. C. C., 78, heard in connection with this case, we understand that defendants will promptly adjust their rates in conformity with these views, and therefore no order will now be issued.

The case will be held open for the entry of such order as may hereafter be found necessary.

No. 3780.  
IN THE MATTER OF IMPORT RATES.

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*Submitted April 10, 1912. Decided June 4, 1912.*

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For reasons given in *Chamber of Commerce case*, ante page 55, Philadelphia and Baltimore allowed certain differentials under New York on import traffic, but held that the import rates from Boston should be the same as from New York.

*William M. Coates* for Philadelphia trade bodies.

*A. S. Crane* and *Edgar J. Rich* for Boston & Maine Railroad.

*J. B. Thayer*, *George D. Dixon*, and *George Stuart Patterson* for Pennsylvania Railroad Company.

*Charles S. Hamlin* and *D. O. Ives* for Boston Chamber of Commerce.

*George F. Randolph*, *W. Irvine Cross*, *Hugh L. Bond, jr.*, *Robert B. Ways*, and *C. S. Wight* for Baltimore & Ohio Railroad Company.

*Robert Ramsay* for commercial bodies of Baltimore.

*Frank L. Neall* for joint committee of trade bodies of Philadelphia.

*C. F. Daly*, *Clyde Brown*, *Chas. C. Paulding*, and *W. S. Kallman* for New York Central lines.

*N. B. Kelly* for Philadelphia Chamber of Commerce.

*John F. Auch* and *Charles Heebner* for Philadelphia & Reading Railway Company.

*T. N. Jarvis* and *Walter T. Moore* for Lehigh Valley Railroad Company.

*Harry E. Belles* for United Businessmen's Association of Philadelphia.

*Arthur Geo. Brown* and *John B. Daish* for Baltimore Chamber of Commerce and Board of Trade of city of Baltimore.

*W. L. Divine* and *A. P. Gilbert* for Chesapeake & Ohio Railway Company.

*Philip Godley* for Philadelphia Board of Trade.

*John C. Howard* for S. E. Comstock & Company.

*James Collins Jones* for Philadelphia Board of Trade, Philadelphia Chamber of Commerce, Commercial Exchange of Philadelphia, and Philadelphia Maritime Exchange.

*James L. King* for Commercial Exchange of Philadelphia.

*E. J. Lavino* for Philadelphia Board of Trade.



*Ottmar Marcus* for Old Town Merchants & Manufacturers' Association of Baltimore.

*Wm. A. Porcher* for Trunk Line Association.

*P. D. Todd* and *P. F. Young* for Philadelphia Maritime Exchange.

*Andrew C. Trippe* and *James McC. Trippe* for Merchants' & Manufacturers' Association of Baltimore.

*Herbert Sheridan* for Baltimore Chamber of Commerce.

*B. D. Caldwell*, *J. L. Seager*, and *John H. Crawford* for Delaware, Lackawanna & Western Railroad Company.

### REPORT OF THE COMMISSION.

*CLARK, Commissioner.*

In 1908, and for a period prior thereto, the inland import rates on shipments destined to points in the so-called "differential territory" from the several ports were, taking Chicago as illustrative, as follows, in cents per 100 pounds:

	All-rail; classes.						Lake-and-rail; classes.					
	1	2	3	4	5	6	1	2	3	4	5	6
Boston.....	70	61	47	33	28	23½	57	50	38	27	23	20
New York.....	75	65	50	35	30	25	62	54	41	30	25	21
Philadelphia.....	69	59	48	33	28	23	56	48	39	28	23	19
Baltimore.....	67	57	47	32	27	22	54	46	38	27	22	18

Under commodity rates, all-rail and lake-and-rail, Baltimore and Philadelphia had differentials under New York, respectively, of 3 cents and 2 cents per 100 pounds.

Early in 1909 the Boston roads reduced these rates and that action was followed by corresponding reductions from the other ports. Still further reduction was made from Boston, and that also was met by the lines from the other ports.

As a means of terminating the rate war thus inaugurated, the railroads serving the ports of Boston, New York, Philadelphia, and Baltimore, and the commercial bodies of Boston, Philadelphia, and Baltimore requested the Commission in May, 1910, to decide or advise as to the adjustment of the inland import rates from the several ports, (a), temporarily, until the Commission could render a final decision; and (b), finally, after full hearing and investigation.

Under submission (a) the Commission decided that temporarily the inland import rates from Boston, Philadelphia, and Baltimore should be lower than from New York, and the same as then applied from Baltimore.

Shortly thereafter, complaint was filed by the New York interests alleging unreasonable import and export rates to and from New

York and unjust discrimination against New York in the maintenance of lower export and import rates to and from Baltimore, Philadelphia, and Boston. These two cases were heard, briefed, and argued together and the conclusions of the Commission have been announced in *Chamber of Commerce of the State of New York v. N. Y. C. & H. R. R. R. Co.*, 24 I. C. C., 55. Those conclusions are controlling in the instant case.

We are therefore of the opinion that differentials under New York on this traffic, all-rail or lake-and-rail, from Philadelphia and Baltimore should be the same as, and in no event greater than, those which existed in the latter part of 1908, to wit, in cents per 100 pounds:

Classes.....	1	2	3	4	5	6	Commodities.
Philadelphia differentials.....	6	6	2	2	2	2	2
Baltimore differentials.....	8	8	3	3	3	3	3

and that the import rates from Boston should be the same as from New York.

24 I. C. C.

No. 3694.

HOLLAND BLOW STAVE COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted July 12, 1911. Decided June 6, 1912.*

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Complainant makes a general attack on the carload rates on barrel staves and headings from Decatur, Ala., and alleges that the present adjustment is unduly prejudicial to complainant and unduly preferential to its competitors at Memphis, Tenn. *Held:*

1. That to southeastern markets the revision proposed by the Louisville & Nashville Railroad should be made.
2. That to western markets the present adjustment is unduly discriminatory to the extent that the Decatur rates exceed by more than 4 cents the rates from Memphis.
3. That to central markets the record does not justify a finding that the present adjustment unduly discriminates against Decatur in favor of Memphis.
4. That to Gulf markets, New Orleans, La., and Gulfport, Miss., the rate of 15 cents from Decatur appears to be too high by comparison with the charges received by the Louisville & Nashville on the Memphis traffic for the transportation from Memphis and from Birmingham. This goes, however, to the reasonableness of the rate and we can not reach any conclusion with respect thereto because the complaint can not be construed as attacking the reasonableness *per se* of the rates in question.

*Emerson Bentley and Alfred Mead* for complainant.

*Nelson W. Proctor* for Louisville & Nashville Railroad Company.

*M. P. Callaway* for Southern Railway Company and others.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complainant, which is a corporation engaged in the manufacture and sale of sawed headings and staves at Decatur, Ala., makes a general attack on the carload rates on barrel staves and headings from Decatur, Ala. The gravamen of the complaint is that the present rate adjustment is unduly prejudicial to complainant and unduly preferential to its competitors at Memphis, Tenn. We are asked to remove this discrimination by giving Decatur the Memphis rates in



some instances and in others certain differentials over or under Memphis. The complaint can not be construed as attacking the reasonableness *per se* of the rates, though testimony along this line was admitted over defendants' objections.

The staves from complainant's plant are shipped to barrel manufacturers throughout the country. The testimony shows that the raw material in the form of bolts and rough staves is secured from northern Alabama and is hauled by wagons from the mills in the mountains to the railroad or to the Tennessee River and thence transported to Decatur. There the bolts and rough staves are manufactured into tight barrel staves, which are then either air-dried or are put through a kiln-drying process and jointed, so that the barrel manufacturers who purchase them can raise them into barrels without any further labor. The kiln-dried treatment is more expensive than air-drying, and the listed basis on which all stave prices are calculated includes only air-dried staves. In the process of manufacture about two-thirds of the weight of the bolt is lost and the remaining one-third goes into the finished article. The staves are classified, like lumber, into different grades, although they take different names. Complainant's witness stated that the market price at the time of the hearing of the bourbon grade, used for bourbon whisky, was \$65 per 1,000 f. o. b. Decatur, while the spirit stave, used for whisky spirits, a thinner and lighter stave than the bourbon, was valued at from \$42 to \$44, the oil or turpentine grade at about \$30, and the "cut-off" grade, made from the refuse material, at from \$12 to \$13. The average weight of a standard stave is 4 pounds, and from 12,000 to 15,000 of them can be loaded into a car, making an average weight per car of from 50,000 to 60,000 pounds.

The markets to which lower rates are sought are described in the petition as:

- (1) Central markets, located in central freight association territory.
- (2) Eastern markets, located in trunk line territory.
- (3) Southeastern markets, located in southeastern territory.
- (4) Western markets, located west of the Mississippi River.
- (5) Gulf ports, comprising New Orleans and Gulfport.

To central markets the rates from Memphis are from 1 to 6 cents lower than from Decatur, and to these destinations Decatur asks the establishment of the Memphis rates. To practically all eastern markets Memphis and Decatur take the same rates, except that in one or two instances the Decatur rates are slightly lower. The complaint as to these rates was apparently based upon complainants' misconstruction of the tariffs, and as only the Memphis rates are sought to this territory, that portion of the complaint is dismissed.

To southeastern markets the rates range from a fraction of 1 cent in favor of Decatur to 3 cents in favor of Memphis, and we are asked to give Decatur a differential under Memphis to this territory. To western markets Memphis has an advantage of from 6 to 10 cents, which Decatur asks be reduced to 3 cents by a reduction in the Decatur rates. There is an alternative prayer that whatever differential the Commission concludes to establish in favor of Decatur to southeastern markets be not exceeded in fixing the differential in favor of Memphis to western markets. To Gulfport and New Orleans Memphis has a rate of 10 cents and Decatur 15 cents. A 10-cent rate is sought from Decatur.

Dissimilarity of circumstances and conditions at Memphis and Decatur is the defense, coupled with the allegation that rates from these points bear no relation one to the other and are constructed upon entirely different bases.

Decatur is 121 miles south of Nashville, on the main line of the Louisville & Nashville Railroad extending from Louisville through Nashville to New Orleans. It is also on the Chattanooga and Memphis division of the Southern Railway, 122 miles west of Chattanooga and 191 miles east of Memphis. The Louisville & Nashville has a branch line from Memphis running north and connecting with its main line at Guthrie en route St. Louis. Via the Louisville & Nashville, Memphis is 386 miles from Decatur.

#### CENTRAL MARKETS.

Under this heading complainant includes a number of points on and south of the Ohio River, to which the Decatur rates are from 1 to 2 cents higher than the Memphis rates. The principal points north of the Ohio River are Chicago, Indianapolis, Peoria, and Terre Haute, to which Decatur takes a rate from 4 to 6 cents higher than Memphis. The present rates on staves and headings from Decatur to Ohio River crossings were established in December, 1902, and represent a reduction of 2 cents per 100 pounds under the rates theretofore in effect. This reduction was made to place Decatur on a parity with Florence, Ala., a stave-producing point on branch lines of the Louisville & Nashville and the Southern, about 50 miles west of Decatur via the Southern. The rates from Memphis to the Ohio River crossings have been in effect since March 17, 1890. All of them, both class and commodity, from Memphis to the Ohio River, are largely influenced by water competition on the Mississippi River, and while such competition is not now so potent, it was an important factor when the rates were established, and might be revived under a higher scale of rail rates. To Cincinnati, Louisville, and Evansville the Decatur rates are, respectively, 16, 13, and 14 cents, and the

Memphis rates 15, 12, and 11 cents per 100 pounds. The following table illustrates the relation between the Decatur and Memphis class rates:

## TO CAIRO, ILL., AND PADUCAH, KY.

	Classes—						Average.	Class A.	Staves, car-loads.
	1	2	3	4	5	6			
From—									
Decatur, Ala.....	79	69	58	47	40	30	53.8	23	14
Memphis, Tenn.....	50	38	35	27	23	19	32	11	10
Difference.....	29	31	23	20	17	11	21.8	12	4

## TO EVANSVILLE, IND.

From—									
Decatur, Ala.....	79	69	58	47	40	30	53.8	23	14
Memphis, Tenn.....	62	47	42	33	28	23	39.2	13	11
Difference.....	17	22	16	14	12	7	14.6	10	3

## TO LOUISVILLE, KY.

From—									
Decatur, Ala.....	79	69	58	47	40	30	53.8	23	13
Memphis, Tenn.....	65	50	45	35	30	25	41.7	15	12
Difference.....	14	19	13	12	10	5	12.1	8	1

## TO CINCINNATI, OHIO.

From—									
Decatur, Ala.....	89	79	68	55	47	36	62.3	27	16
Memphis, Tenn.....	75	60	55	40	35	30	49.2	20	15
Difference.....	14	19	13	15	12	6	13.1	7	1

To Cairo, Memphis takes 63.3 per cent of the Decatur rate, sixth class, and 71.4 per cent on staves; to Evansville, 76.6 per cent, sixth class, and 78.6 per cent on staves; to Louisville the percentages are 80.3 and 92.3, while to Cincinnati they are 83.3 and 93.7. This indicates that the relation between the stave rates is more favorable to Decatur than the relation between the class rates. Decatur's location on the Tennessee River, so vigorously urged by these defendants in every case where Decatur was alleged to be the favored point, of course should entitle it to a rate adjustment which takes cognizance of the water factor, but we are not prepared upon this record to say that it has not now an equitable basis of rates to the Ohio River.

To points north of the Ohio River the Decatur rates are made on the lowest Ohio River combination. From Memphis the same basis applies, but a proportional rate to Cairo of 7 cents is used—3 cents less than the local rate. This proportional rate was established in 1897 to allow Memphis lumber dealers to compete in the handling



of lumber originating on the Mississippi River with lumber dealers at Cairo, Ill., and in Arkansas, who were shipping to territory north of the Ohio River. It is alleged that this traffic had been moving through Cairo and East St. Louis, and it was contended that if the proportional rate was not established none of the traffic would move through Memphis. Much of the lumber and logs are hauled by water lines either to Cairo or Memphis. If not handled through Memphis the lines east of Memphis can not participate in the haul, and to induce the movement in that direction the proportional rate was published. Furthermore, the line of the Illinois Central Railroad extends direct from Memphis to Chicago, Indianapolis, and Peoria, while the Rock Island also reaches direct from Memphis numerous points in central freight association territory, and to such points the rates are not so much affected by the arbitraries exacted by the lines north of the Ohio River. The Decatur rate to Chicago is the same as the Chattanooga rate, while to Terre Haute and Indianapolis it is only 1 cent higher. On this record we are not prepared to hold that the present adjustment to so-called central points unduly discriminates against Decatur in favor of Memphis. The relation of the Decatur rates to rates other than Memphis is not before us, and nothing herein said must be construed as approving the Decatur rates generally.

#### SOUTHEASTERN MARKETS.

To the southeastern markets the Decatur rates are made the same as Nashville, which, in turn, except as to a few Florida points, are made 8 cents under Louisville, but not less per ton per mile than the Louisville rates because of the shorter distance. To Florida points the Jacksonville combination applies. The Memphis rates are made 4 cents under Louisville, but not less per ton per mile than the Louisville rates. For some reason not apparent the rates to certain Georgia points from Nashville have not been made upon this basis, and it is proposed by the Louisville & Nashville to revise such rates, which revision will have the effect of reducing also the Decatur rates, as illustrated by the following:

*Rates in cents per 100 pounds.*

	Present rate.	Proposed rate.
Fitzgerald, Ga.....	23	22.5
Tifton, Ga.....	23	21
Thomasville, Ga.....	23	20.5
Quitman, Ga.....	21.6	21
Valdosta, Ga.....	23	21
Moultrie, Ga.....	21	22
Waycross, Ga.....	23	20.5
Bainbridge, Ga.....	18.5	18

This revision, we think, should be made. The southeastern rates will be then substantially as prayed for in the petition, and as it appears that the Decatur rates for a long time have been made the same as Nashville, and as this adjustment does not appear to be illogical or inequitable, we are not disposed upon this record to require defendants to make any further reductions than those proposed. To Florida points the construction of rates on Jacksonville combination gives to Decatur an advantage of 2 cents per 100 pounds. Of course, the fact that the Decatur rates are made with relation to Nashville rather than Memphis does not mean that Decatur could not be discriminated against in favor of Memphis. Defendants' contention in this respect is not as convincing as it may have been intended to be. The rates are alleged to be unreasonable only with relation to Memphis, and we view this attack as being based primarily on the ground of discrimination. If this discrimination were removed by an increase in the Memphis rates complainant avers that it would not be satisfied. For that reason no order will now be made, but defendants will be given 60 days within which to adjust their rates in conformity with the views herein expressed, failing in which complainant will be allowed to amend its petition to broaden the issues raised thereby.

#### WESTERN MARKETS.

The present rates from Memphis and Decatur to the western markets involved, together with the respective distances, are as follows:

*Rates in cents per 100 pounds; distance in miles.*

To—	From Decatur.		From Memphis.	
	Rate.	Distance.	Rate.	Distance.
Burlington, Iowa.....	23	621	17	536
Cedar Rapids, Iowa.....	29	693	21	621
East St. Louis, Ill.....	18	413	12	314
Kansas City, Mo.....	27	673	17	484
Keokuk, Iowa.....	23	592	17	493
Omaha, Nebr.....	28	871	21	682
Ottumwa, Iowa.....	25.5	668	17.5	569
St. Louis, Mo.....	18	413	12	314
St. Joseph, Mo.....	27	741	17	552

To these markets a differential of 3 cents over Memphis is asked. To most of these points the rates are constructed on Ohio and Mississippi river combinations. This is likewise true of all class and commodity rates from Decatur. The rate of 27 cents to Kansas City and St. Joseph, however, is said to be made on Memphis combination, but to both of these points the Memphis combination makes 26 cents. Just how the Memphis rates to this territory are con-



structed we are not advised. The western carriers, while parties defendant, did not appear at the hearing, the entire defense being assumed by the Louisville & Nashville and the Southern, who contended that they had no voice whatever in the making of the Memphis rates, which were fixed entirely by the western lines. This defense can scarcely be regarded as convincing, for when a complainant has included in his petition all carriers who may be responsible for a given rate or rates, he has done everything in this respect which reasonably may be required of him.

Shipments moving over the Southern Railway from Decatur might move via Corinth and Cairo, but could also move via Corinth and Memphis, a distance of 191 miles. Via the Louisville & Nashville it would be hardly practicable to move Decatur shipments through Memphis. The rate from Memphis to St. Louis is 12 cents, yielding 7.64 mills per ton per mile for 314 miles. The same rate per ton per mile applied from Decatur, 413 miles, would make a rate of 15.77 cents. To Omaha, the Memphis rate is 21 cents for 678 miles, and yields 6.19 mills per ton per mile, and the rate of 24 cents requested from Decatur, 871 miles, would yield 5.51 mills, a decrease of 0.68 mill for an increased haul of about 200 miles. From Decatur the rate to Kansas City is 27 cents, and to Omaha 28 cents, an increase of only 1 cent for a similar increased haul. Traffic moving from Decatur through Memphis to Kansas City or Omaha would have to travel more than 191 miles farther than if hauled direct from Memphis. To Burlington and Keokuk the Memphis rate is 17 cents, and the Decatur rate 23 cents, a difference of 6 cents in favor of Memphis. To Ottumwa the Memphis rate is 17.5 cents, one-half cent higher than to Burlington, while from Decatur it is 25.5 cents, 2½ cents higher than to Burlington. To Cedar Rapids the Memphis rate is 21 cents, 4 cents higher than to Burlington, while the Decatur rate is 29 cents, 6 cents higher than Burlington. It therefore appears that on westbound traffic Decatur bears an exceedingly varying relation to Memphis, while its location justifies a more fixed relation. Under all the circumstances we are of opinion that the present adjustment is unduly discriminatory to the extent that the Decatur rates to the aforesaid so-called western markets exceed by more than 4 cents the rates from Memphis to the same destinations. Defendants have urged that they should not be required to haul this traffic from Decatur to Memphis at no more than the 3-cent differential sought by complainant. In our finding we do not attempt to pass upon the division of the joint rate that the Louisville & Nashville and the Southern shall receive. We do find that complainant should not be required to pay more than 4 cents per 100 pounds than Memphis to this western territory, and if defendants can not agree upon their divisions this Commission will establish the same upon proper application.



## GULF PORTS.

As already stated, the rate from Memphis to New Orleans, La., and Gulfport, Miss., is 10 cents, while to the same points the Decatur rate is 15 cents. The Southern Railway reaches neither New Orleans nor Gulfport, and the Louisville & Nashville, while extending to both these destinations, hauls practically no traffic thereto from Memphis, because, via its line, the distance to New Orleans is 886 miles, while the short-line distance via the Illinois Central is 395 miles, and to Gulfport the distance via the Louisville & Nashville is 819 miles as compared with 373 miles via the Illinois Central and Gulf & Ship Island. Furthermore, the Memphis-New Orleans rates are largely influenced by water competition, and we think that all of these circumstances create such a dissimilarity of transportation conditions surrounding the traffic from Memphis as compared with Decatur as to preclude a finding of unjust discrimination.

While the Louisville & Nashville hauls practically no traffic from Memphis via its own line, it does participate in a substantial traffic at a 10-cent rate from Memphis to Gulfport and New Orleans via the Frisco to Birmingham and its own line beyond, out of which it must receive materially less than 10 cents.

Again, the distance from Decatur to Gulfport is 395 miles and to New Orleans 441 miles. The same rate of 15 cents will carry staves to Gulfport and New Orleans from St. Louis, nearly 700 miles; Terre Haute, 802 miles; Indianapolis, about 900 miles; and Chicago, over 900 miles. The per-ton-mile revenue at the 15-cent rate to Gulfport is 7.6 mills, and to New Orleans, 7 mills, while it is only 3.75 mills for a distance of 800 miles.

Considering the charges received by the Louisville & Nashville on the Memphis traffic for the transportation from Memphis and from Birmingham, it would seem that the 15-cent rate from Decatur is too high. This goes, however, to the reasonableness of the rate, and we can not reach any conclusion with respect thereto, because, as before stated, the complaint can not be construed as attacking the reasonableness *per se* of the rates in question.

Complainant has asked for reparation, but in view of the fact that the existing adjustment has obtained for many years, and apparently was in effect when complainant began operations at Decatur, no reparation will be awarded.

No. 3090.  
McCLOUD RIVER LUMBER COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted December 30, 1910. Decided June 4, 1912.*

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Complainant is entitled to through routes and joint rates on lumber in carloads from McCloud, Cal., to the eastern destinations to which the coast group rates apply, but such rates should not exceed the coast group rates by more than  $1\frac{1}{2}$  cents per 100 pounds.

*Pillsbury, Madison & Sutro* and *J. O. Bracken* for complainant.  
*Robert Dunlap, T. J. Norton,* and *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

*C. W. Durbrow* and *Nathan P. Bundy* for defendants other than McCloud River Railroad Company and Atchison, Topeka & Santa Fe Railway Company.

*F. C. Dillard* for Southern Pacific Company and others.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Alleging unjust discrimination, the complaining corporation asks the establishment of "reasonable through and joint rates" on lumber, carloads, from McCloud, Cal., to eastern destinations, on the same bases as those applicable from the so-called "coast rate group." On account of the practical identity of ownership of complainant and the McCloud River Railroad we have held this case pending our conclusions in the *Tap Line case*, 23 I. C. C., 277.

Complainant is engaged in logging and the manufacture of lumber. It owns some 230,000 acres of timber lands in Siskiyou county, Cal., about 65,000 acres of which have been cut. Assuming that the same amount per year will be cut in the future as in the past, complainant estimates that it will take 30 years to deforest the remaining acres. One of the defendants, however, questions this calculation and estimates that it will require but half that time. The sawmills and plant of complainant are located at McCloud, which is on the McCloud River Railroad, 17 miles from Sisson, Cal., a main-line station on the Southern Pacific and the junction of the two carriers. In 1908 it manufactured 54,000,000 feet of lumber and in the

following year 75,000,000 feet. Approximately 45 per cent of the annual output, amounting to between 1,200 and 1,500 cars, was shipped to points east of Ogden, Utah.

The logs are hauled an average distance of 20 miles to McCloud over temporary spurs of the McCloud River Railroad, for which service a charge of \$10 a car is made. The lumber is loaded on cars of foreign carriers, which are transported by the McCloud River Railroad to Sisson, its western terminus, at which point they are delivered to the Southern Pacific Company for carriage by it and other defendants to final destination. There is no reloading or other change in the shipments after they are loaded at McCloud. It is testified that they are billed from McCloud to Sisson and are rebilled thence to destination; that is, while the carriage is continuous from McCloud to destination it is not under through billing. The record is not as clear on this point as might be wished, but the statement just referred to is understood to relate to way-billing and not to bills of lading, as it appears that the charges of the McCloud River Railroad for the haul to Sisson follow on the billing to destination and are collected at destination. The rate for transportation from McCloud to Sisson is  $11\frac{1}{4}$  cents per 100 pounds.

The rates per 100 pounds applicable from Sisson and other points grouped therewith to points of destination in the states named are: Colorado, 40 cents; Nebraska and Kansas, 50 cents; Iowa, 50 and  $57\frac{1}{2}$  cents; Illinois and Indiana, 60 cents; New York, Pennsylvania, New Jersey, and Maryland, 75 cents.

These rates apply from main-line and branch-line points on the Atchison, Topeka & Santa Fe; from main-line and branch-line points on the lines of the Southern Pacific Company in California and Oregon, with the exception of Truckee River and San Francisco Bay points, and from points on lines of which the Southern Pacific has control through ownership of the capital stock. From the Truckee River points differentials below the coast rates are applicable, and from San Francisco Bay points lower proportional commodity rates apply. It is alleged that these proportional rates were established in an effort to divert lumber from Portland and Puget Sound points down through California.

Competitors of complainant are located at Weed, Hilt, and Bray, Cal., and Klamath Falls, Oreg. Weed and Hilt are on the main line of the Southern Pacific, the former 12 and the latter 95 miles north of Sisson. Bray and Klamath Falls are on the line of the California Northeastern Railroad; Bray is a short distance north of Weed and Klamath Falls and 98 miles north of Sisson. The plant of the lumber company which ships from Klamath Falls is located at Shippington, 3 miles from Klamath Falls and on a spur of the California Northeastern.



Complainant contends that the circumstances and conditions under which the lumber is produced and milled by its competitors are identical with the methods it employs. But, while the plant at Hilt owns its logging road, the testimony does not show that any of complainant's competitors owns a line extending from the mill to the junction point with the Southern Pacific Company. It does appear that in getting the logs to the mills some of its competitors traverse a greater distance than does complainant. No witness was able to state the rates paid by the other lumber companies for having their logs carried to the mills, but, inasmuch as the coast group rates apply from Weed, Hilt, Bray, and Klamath Falls, complainant contends it is subjected to discrimination to the extent of the local rate of the McCloud River Railroad Company from McCloud to Sisson, and that by reason thereof it is unable to market certain kinds of lumber, particularly fir.

Defendant McCloud River Railroad Company did not answer the complaint, nor was it represented at the hearing. It was organized January 21, 1897, under the laws of California. It has 46 miles of main line and 51 miles of logging branches and spurs. It extends from Bartle to Sisson, Cal. Its capital stock is \$1,200,000 and it has bonds outstanding in the same amount. It has five directors, three of whom are officers in the McCloud River Lumber Company—the president, general counsel, and assistant to president. Complainant owns 11,975 shares of its stock and is entitled to elect a board of directors at the stockholders' meeting. It has six stockholders, presumably complainant, and the five directors. An exhibit of defendants', listing local roads with which the Southern Pacific has no joint rates, shows the McCloud River Railroad as a common carrier, and in argument it was conceded to be such. It is a member of the American Railway Association, one of the articles of which provides:

To be admitted to membership a road must be a common carrier, dependent upon its revenues from transportation. Railways are ineligible to membership, whether incorporated or not, which are used primarily to transport the material or product of an industry or industries to and from a point on a railroad which is a common carrier or those which are merely adjuncts to such industries.

It files tariffs and reports and keeps its accounts in accordance with the regulations of the Commission. The testimony shows that it operates six passenger trains daily, four of which are run between Sisson and McCloud and two between McCloud and Bartle. It carries an average of 75 passengers each day, the United States mail, and express matter. Its annual report for the year ended June 30, 1910, shows that it had 11 locomotives, 2 combination cars used in

passenger service, 327 flat cars, 6 tank cars, 19 other cars in freight service, 1 pay, 3 caboose, and 32 other road cars.

The freight revenue for the year ended June 30, 1910, was \$466,921.23, and total passenger-train revenue, which includes excess baggage, mail, and express, \$25,703.60. Its net corporate income, after deducting interest on funded debt and other interest of \$61,343.68 and taxes, was \$115,458.06. The total cost of road and equipment is stated to have been \$2,515,419.17.

According to the same report its freight tonnage was as follows:

	Originating on the road.	Received from connecting roads and other carriers.	Total.
	Tons.	Tons.	Tons.
Products of agriculture.....	888	1,791	2,679
Products of animals.....	1,256	59	1,315
Products of mines.....	7	26	33
Products of forests.....	405,181	47	405,228
Manufactures.....	694	1,601	2,295
Merchandise.....	872	2,161	3,033
Miscellaneous.....	17,749	530	18,279
Total.....	426,647	6,215	432,862

It will be seen that nearly 94 per cent of the total freight tonnage of the road was products of the forest.

The McCloud River Railroad Company has no joint rates on lumber, but has joint commodity rates on many other articles between points on its line and points on the lines of the Richmond Belt Railway and the Southern Pacific Company in California and Oregon. Aside from complainant's plant there are no lumber mills on the line of the McCloud River Railroad. It is therefore seen that by far the greater part of its traffic is furnished by its owner, the complainant.

Complainant submits that the McCloud River Railroad Company is a common carrier, that the fact that complainant owns the stock of the McCloud River Railroad Company is immaterial, and that it is entitled to have the joint rates applicable from coast rate group points established from McCloud.

It has always been the policy of defendant Southern Pacific Company to consider a railroad built by a lumber company and operating from the forest to its main line as a transportation facility analogous to an ox team, a flume, or other means of conveyance, the expense of which should be borne by the lumber company and not by the Southern Pacific Company. In other words, its theory is that the building of such a branch is for the purpose of conveying lumber to the main line by the cheapest method available, and it has consistently refused to allow such railroads divisions of joint rates. The

policy of northern roads in Washington, Oregon, and British Columbia is to apply the group rate from all branch-line points whether or not such branch lines are independently owned.

Defendants take the position that complainant might have located its plant at Sisson; that it located at McCloud with full knowledge that it would be compelled to pay whatever charge might be assessed by the McCloud River Railroad Company; and that the establishment of joint rates on a lower basis than the combination on Sisson would amount to the payment of an indirect rebate to complainant, thereby working a discrimination against complainant's competitors.

It is argued that in the so-called *Northwest Lumber cases*, 14 I. C. C. Rep., 1, 23, 41, 51, the Commission established certain rates as reasonable for the transportation of lumber and its products from the northwest territory to eastern destinations; that carriers serving California lumber-producing territory voluntarily reduced their advanced rates to the basis established by the Commission from Oregon and Washington points, and that, consequently, they should not be forced to give an independent road a portion of their earnings. The lumber rates of other independently owned roads in the same territory for the haul from point of origin to junction with the Southern Pacific are as follows:

Railroad.	Distance.	Rate per ton or per 1,000 feet.
	<i>Miles.</i>	
Boca & Loyalton R. R. ....	26	\$1.50
Butte County R. R. ....	19	2.50
Los Angeles & Redondo Ry. ....	17	1.20
Nevada Copper Belt Ry. ....	18	2.00
Petaluma & Santa Rosa Ry. ....	14-39	2.00
Pacific & Eastern Ry. ....	16	.80
Rogue River Valley R. R. ....	6	.40
Salem, Falls City & Western Ry. ....	13	1.00
Sierra Railway of California. ....	45	1.05
Yosemite Valley R. R. ....	17½	1.25
Yreka Ry. ....	8	.50

Defendants urge that the sole control of the McCloud River Railroad being in the hands of complainant, it is well within its power to reduce the local rate from McCloud to Sisson to such an extent that complainant would be placed on a substantial parity with its competitors; that is, if the combination of rates is in the aggregate unreasonable and discriminatory, the factor to be diminished is not the group rate, but the local of the McCloud River Railroad.

Defendants are emphatic in their contention that the consistent policy of the Southern Pacific not to grant allowances or accord divisions to independently owned branch lines has the approval of the Commission in decided cases, and that the complainant is now



asking the Commission, as an initial proposition, to fix, not reestablish, joint rates, and to allow therefrom a division to the McCloud River Railroad, almost the sole business of which is the transportation of lumber and forest products for its owner, the complainant.

It should be borne in mind that the specific complaint is discrimination and that the hook on which that charge is hung is that the combination rate from McCloud is higher than that from the group; that is, while it is sought to pare down the earnings of all defendants, other than the McCloud River Railroad, to the extent of the allowance to it of an indefinite division, the principal offender, if any there be, in establishing unreasonable rates from McCloud, would seem to be the McCloud River Railroad. Using the rates on roads of the same general character in California and Oregon as shown above, and considering the net income of the McCloud River Railroad, the charge for the haul from McCloud to Sisson as applied to interstate transportation would appear to be unusually high.

On the other hand, aside from the fact that a joint rate is frequently lower than a combination of intermediate rates, there is nothing in the record to suggest that the group rate applicable from Sisson, as a point of origin, which was voluntarily established by the defendants following the decision of the Commission in the *Northwest Lumber cases, supra*, is unjust and unreasonable. Defendants, participants in that joint rate, answer the implication of discrimination by suggesting that complainant's competitors bring lumber to the main line group points by various modes of conveyance, including steam railroads, and there is nothing to prevent complainant doing the same. But there are many competitors of complainant who are located on the main lines and on branch lines of originating defendants for whom defendants perform a greater service under the group rates than they perform for complainant for the same charge.

From the whole record we are of the opinion that the McCloud River Railroad Company is a common carrier engaged in the transportation of interstate commerce for others than its owners to such a substantial extent that it is subject to the burdens and entitled to the benefits of the act to regulate commerce. It may, therefore, be treated differently than as if it were a mere plant facility. Having that status, it is immaterial that a separate corporate entity, the complainant herein, owns a controlling interest in its capital stock, so long as it receives no division or allowances out of the rates which is sufficient to constitute an unlawful preference or to be in fact or effect a rebate from the lawful charges.

The remaining question is whether or not complainant is entitled to joint rates and, if so, the amount thereof. The Commission will

exercise its power to fix joint rates whenever and only where the circumstances and conditions of the case before us clearly warrant it. Even though it be shown that a railroad is a common carrier, it may be that the purposes of the act will not be subserved but be defeated by the establishment of joint rates with it.

Complainant calls attention to the fact that California group rates are in many instances from  $2\frac{1}{2}$  to 5 cents higher than those applicable from north Pacific coast group points, and adverts to the fact that the Commission prescribed rates not alone from points on main lines in that territory, but also from points on the lines of independent roads, and argues that even from California territory certain independent roads, such as the Northwestern Pacific Railroad, San Diego Southern Railway, and San Diego, Cuyamaca & Eastern Railway companies, much farther away from eastern markets than Sisson or McCloud, are accorded coast group rates. Distance can not be recognized as controlling. If it were, there could be no group rates. The Commission did not have before it in the *Northwest Lumber cases, supra*, any question of establishing joint rates or the division thereof. The rates were prescribed from points on the defendants' lines via routes already established, and all questions of the application of the group rates from points on independent lines and of divisions of joint rates had been or have been settled by agreements between the carriers.

We are of the opinion, and find, that complainant is entitled to through routes and joint rates from McCloud to the eastern destinations to which the coast group rates apply, and that said rates should not exceed the coast group rates by more than  $1\frac{1}{2}$  cents per 100 pounds. We are not asked to prescribe the divisions of these rates, but if defendants fail to reach an agreement in regard thereto the Commission will enter such supplementary order as may be necessary. We deem it proper to suggest that we do not think the McCloud River Railroad should have a division of these rates that exceeds 3 cents per 100 pounds.

An order in conformity with these views will be entered.

24 I. C. C.

No. 3558.

SUPERIOR COMMERCIAL CLUB OF SUPERIOR, WIS.,

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

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No. 3754.

CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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No. 3938.

DULUTH BOARD OF TRADE

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

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*Submitted February 14, 1912. Decided June 3, 1912.*

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1. Upon complaints alleging that the rates on grain from points in North and South Dakota, southern Minnesota and northern Iowa to Superior and Milwaukee, Wis., and Duluth, Minn., as compared with rates from the same territory to Lake Michigan ports, Minneapolis and other markets, are unreasonable and unjustly discriminatory and that rates on grain products from Superior, Wis., via lake-and-rail to Atlantic seaboard points are unjustly discriminatory as compared with like rates from Chicago; *Held*, That the complaint of unjust discrimination in lake-and-rail rates on grain products is not sustained; that as to grain traffic in this territory the circumstances and conditions of transportation are so substantially similar that distance must be controlling; that the rates on grain from South Dakota, Minnesota, and Iowa to Duluth-Superior should not exceed the rates to Milwaukee or Chicago for equal distances; that the grain rates to Milwaukee from portions of South Dakota, Minnesota, and Iowa should not exceed the rates to Duluth-Superior for equal distances; that distances are to be measured by the short line of the originating system having lines to Duluth-Superior and to Milwaukee or Chicago, the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha being considered as one system, and the Chicago, Milwaukee & St. Paul as having its own rails to Duluth; that the Great Northern's differential on grain at Willmar as between Minneapolis and Duluth-Superior should not exceed 3 cents, and that that differential should not be exceeded from any point on the Great Northern beyond



Willmar to and including Sioux City, Iowa, and Yankton and Huron, S. Dak. this adjustment to be made by reducing the Duluth-Superior rates to not more than 3 cents above the present Minneapolis rates; that through rates on grain via the Soo line, the North Western-Omaha system or the Milwaukee system to Duluth-Superior via Minneapolis should in no case exceed the rates from the same points to Minneapolis by more than 4 cents.

2. Prayer for the establishment of through routes and joint rates to Duluth-Superior via the Great Northern crossings denied.

*G. B. Hudnall*, of *Grace, Hudnall & Fridley*, and *J. A. Little* for Superior Commercial Club.

*J. A. Little*, *W. H. Stutsman*, *O. P. N. Anderson*, and *W. H. Mann* for Board of Railroad Commissioners of North Dakota, interveners.

*Miller, Mack & Fairchild*, *Geo. A. Schroeder*, and *James B. Blake* for Chamber of Commerce of the City of Milwaukee.

*Francis W. Sullivan* and *G. Roy Hall* for Duluth Board of Trade.

*John I. Dille*, *W. P. Trickett*, and *T. A. McGrath* for Minneapolis Traffic Association, intervener.

*W. M. Hopkins* for Chicago Board of Trade, intervener.

*J. D. Armstrong* for Great Northern Railway Company.

*C. C. Wright* and *F. P. Eyman* for Chicago & North Western Railway Company.

*William Ellis* for Chicago, Milwaukee & St. Paul Railway Company and Chicago, Milwaukee & Puget Sound Railway Company.

*J. M. Hannaford* for Northern Pacific Railway Company.

*Richard L. Kennedy* and *H. M. Pearce* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*R. V. Fletcher* and *A. P. Humburg* for Illinois Central Railroad Company.

*O. E. Butterfield* for New York Central lines.

*Alfred H. Bright* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

*Ernest S. Ballard* for New York Central & Hudson River Railroad Company and Western Transit Company.

*J. L. Seager* for Delaware, Lackawanna & Western Railroad Company, intervener.

*H. S. Noble* for Mutual Transit Company, intervener.

*Harlan E. Leach* for Owatonna, Minn., Business Men's Club.

*E. J. Henry* for Lehigh Valley Railroad Company, intervener.

*H. A. Taylor* for Erie Railroad Company, intervener.

*Henry Wolf Bikelé* for Pennsylvania Railroad Company and Erie & Western Transportation Company, interveners.

*J. M. Anderson* for Tri-State Society of Equity of Fargo, N. Dak.

## REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

These proceedings grow out of the rivalries between cities at which grain markets or milling interests are located and which are commonly termed "primary markets." The rates on grain from North and South Dakota, southern Minnesota, northern Iowa, and northern Nebraska to Superior and Milwaukee, Wis., and Duluth, Minn., as compared with rates from the same territory to Lake Michigan ports, Minneapolis and other markets, as well as the rates on grain products from Superior via lake-and-rail to Atlantic seaboard points as compared with like rates from Chicago, are put in issue. The cases will be referred to herein as the Superior, Milwaukee, and Duluth cases, respectively. All rates are stated in cents per 100 pounds.

The Board of Railroad Commissioners of North Dakota, the Tri-State Society of Equity of Fargo, N. Dak., the Minneapolis Traffic Association, the Board of Trade of Chicago, the Chamber of Commerce of Milwaukee, the Duluth Board of Trade, the Mutual Transit Company, the Delaware, Lackawanna & Western Railroad Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, the Pennsylvania Railroad Company, and the Erie & Western Transportation Company intervened in the Superior case.

The Minneapolis Traffic Association, the Board of Trade of Chicago, the Superior Commercial Club, and the Duluth Board of Trade intervened in the Milwaukee case.

The Superior Commercial Club, the Chamber of Commerce of Milwaukee, the Board of Trade of Chicago, the Minneapolis Traffic Association, and the Business Men's Club of Owatonna, Minn., intervened in the Duluth case.

Just before the hearings were closed the Omaha Grain Exchange telegraphed expression of desire to intervene to preserve the existing relationships of rates to Omaha from South Dakota and Nebraska points with rates from those points to Minneapolis. They were advised that hearing was about concluded, but that they might be heard on brief if desired. No such brief was presented.

\* The records in *In the Matter of the Investigation of the Advances in Rates by Carriers on Grain, Grain Products, etc.*, 21 I. C. C., 22; *Omaha Grain Exchange v. C. & N. W. Ry. Co.*, 19 I. C. C., 424; and in the so-called *Minnesota Rate cases*, 184 Fed., 765, are stipulated into the record.

It will therefore be seen that a large number of interests are involved. The record is voluminous, and is elaborated by a wealth of detail which demonstrates the energy of the parties and the alertness of counsel to give full weight to every point, however small. The pertinent facts and the controlling issues will be stated as concisely as possible.



The cases are closely interrelated. They were in part heard and were briefed and argued together. The record in each of the cases was stipulated into the record of each of the others. They are therefore disposed of in one report.

At the time the Superior complaint was filed proposed advances in rates on grain from parts of this producing territory were under suspension and investigation by the Commission. Complainant alleges that the rates then in force and the proposed advanced rates from certain parts of North and South Dakota, Minnesota, Iowa, and Nebraska to Superior were unreasonable *per se*, and relatively; unjustly discriminatory and unduly preferential as compared with rates to Milwaukee, Chicago, and Minneapolis; that combinations of rates on grain from said points of origin with proportional rates on grain products from Superior to Atlantic seaboard points, as compared with similar combinations of rates via Milwaukee and Chicago in connection with the milling-in-transit privilege extended to such Lake Michigan ports and points intermediate thereto, subject Superior to unjust discrimination and deprive it of its natural advantages as a lake port and milling point. Complainant prays for the establishment of reasonable rates on grain via the short lines from the points named to Superior; that rates on grain from Nebraska points to Superior shall not be greater than to Chicago and that lake-and-rail rates on grain products from Superior to the Atlantic seaboard shall not be higher than from Chicago to the Atlantic seaboard.

The Milwaukee complaint alleges that rates on grain from certain parts of Iowa, Minnesota, and South Dakota are substantially lower to Duluth than to Milwaukee for substantially equal distances, and that Milwaukee is therefore subjected to undue prejudice. The prayer is for rates to Milwaukee not higher than to Duluth for substantially equal distances.

Originally, Duluth alleged among other things that the rates from southern North Dakota to Duluth were unreasonable. Readjustment of the rates from this territory was made after this complaint was filed, under which, from the greater portion of North Dakota, Duluth and Minneapolis were placed upon a parity. This contention was therefore abandoned at the hearing. Duluth alleges that the rates from South Dakota and southern Minnesota are unreasonable, unjustly discriminatory, unduly prefer Minneapolis, Chicago, and Milwaukee, and violate the long-and-short-haul provision of the law. Complainant alleges that the line of the Great Northern southwesterly from Duluth to Willmar, Minn., Yankton, S. Dak., and Sioux City, Iowa, is the short line from South Dakota and the southerly part of Minnesota to Duluth, and that reasonable rates should be established to Duluth from South Dakota and southern



Minnesota points based upon the several crossings of defendants' lines with the Great Northern's Yankton line. Complainant prays that rates be established from the southerly portion of North Dakota to Duluth not higher than are charged for similar distances in central and northern North Dakota and northern Minnesota to Duluth, and not higher than from the same stations in southern North Dakota to Minneapolis; that the rates from South Dakota and the southerly part of Minnesota to Duluth shall not be higher than the rates for like distances in central and northern North Dakota and northern Minnesota to Duluth; that the alleged undue preference to Chicago, Milwaukee, and Minneapolis be removed, and that through routes and reasonable joint rates applicable thereto be established to Duluth via the several junctions with the Great Northern's Yankton line.

Defendants deny that the grain-products rate from Superior is either unreasonable or unjustly discriminatory, and resist any reduction thereof. They deny that any of the rates on grain to the several markets are unreasonable and say that they have done their best to establish just and reasonable rates and to satisfy the contentions of the different markets, and that they will be glad to have the Commission fix the adjustment, provided it is done without reductions in their revenues.

The Chicago, Milwaukee & St. Paul, the Chicago & North Western, and the Chicago, St. Paul, Minneapolis & Omaha Railway companies, hereinafter referred to, respectively, as the Milwaukee, the North Western, and the Omaha, are defendants in each of the three cases. The Great Northern Railway and the Northern Pacific Railroad Companies are defendants in the Superior and Duluth cases. The New York Central & Hudson River Railroad Company and the Western Transit Company are defendants in the Superior case, and other carriers previously mentioned intervened therein.

The Minneapolis & St. Louis Railroad, the South Dakota Central Railway, the Illinois Central Railroad, the Chicago, Rock Island & Pacific Railway, the Minneapolis, St. Paul & Sault Ste. Marie Railway, the Pierre, Rapid City & Northwestern Railway, the Chicago, Milwaukee & Puget Sound Railway, the Chicago Great Western Railroad, and the Chicago, Burlington & Quincy Railroad Companies are also defendants in the Duluth case.

Practically no evidence was presented as to rates from Nebraska, and no finding is made as to those rates. It appears that out of 9,000 carloads of oats from Nebraska points into Omaha, less than 1,000 cars moved to Chicago, the remainder going to the southeast. About 80 per cent of the coarse grain raised on the line of the Omaha in Nebraska moves to Omaha or to Colorado. The rates on coarse

grain from Nebraska to Duluth are about  $2\frac{1}{2}$  cents higher than to Minneapolis, but little of this coarse grain moves to either place.

In disposing of the *Advanced Rates case, supra*, increased rates on grain from South Dakota were sanctioned, with the limitation that former established and recognized relations in rates from this territory to Minneapolis, Duluth, Milwaukee, and Chicago should be restored except in cases of bona fide errors in tariffs or of elimination of violations of the fourth section of the act. The proposed advanced rates to Omaha were condemned and reasonable maximum rates to Omaha from points in southeastern South Dakota were established. In that case the question before us was the reasonableness of the proposed advanced rates, and the hearing was confined to that issue. The only question of relationship of rates there passed upon was that just stated, and we are by no means concluded by what was there said on that question, which is now squarely presented upon a full record.

While the Commission is not bound by the doctrines of *stare decisis* or *res adjudicata*, this decision so recently announced must be given full weight in determination of the reasonableness *per se* of the rates now in controversy.

In 1893 the Commission decided *Chamber of Commerce of Minneapolis v. G. N. Ry. Co.*, 5 I. C. C., 571. The findings of the Commission establishing differential bases as between Minneapolis and Duluth were not closely followed by the carriers but it would seem that departures from the expressed views of the Commission were in favor of Duluth.

For the purposes of argument, Superior concedes the correctness of that decision, but says that it was not represented in that proceeding and that all of the facts were not then placed before the Commission. That report finds: "There is no evidence to show there are milling interests at any Lake Superior point except Duluth." It is now stated that at that time Duluth had a daily milling capacity of but 5,500 barrels while Superior had a daily milling capacity of 19,500 barrels. It is alleged that since that decision was rendered conditions have materially changed and that the building of new railway lines and extensions of old lines have altered the distances.

In that case the Commission found that Duluth was nearer to the markets than was Minneapolis and that Minneapolis was nearer to the wheat fields than was Duluth. Speaking upon the general proposition that the shortest line should fix the rate, the Commission found that that consideration was fully balanced by the fact that back-loading was more certain and westbound traffic more profitable from Minneapolis than from Duluth. Superior and Duluth are located on opposite sides of the same harbor and are and for a long time have been accorded the same basis of rates. Superior now



shows that the coal receipts of that harbor for the year 1910 aggregated 8,298,398 tons while the shipment of grain products therefrom was but 2,657,509 tons; that 9,070,104 tons of westbound commodities were received by lake as against eastbound lake shipments, excluding ore, of 1,943,420 tons. Ore is excluded because it moves in cars not available for grain. It is stated that just previous to the decision of the Commission in the *Chamber of Commerce of Minneapolis case, supra*, mills were under construction at Superior of a capacity of 120,000 barrels a week, with provisions for installation of additional machinery which would double that capacity. It states that the readjustment of rates under that decision restricted the territory from which Superior could draw grain, and therefore it could not readily secure various kinds and grades of grain in quantities and qualities to make uniform brands of flour, and therefore its milling industry was practically destroyed. The Milwaukee asserts that the movement of coal from Duluth-Superior via its line is not contemporaneous with the movement of grain to those ports, and that much of the coal is moved in cars that are not fit for grain.

Superior seeks to show the unreasonableness of the rates both as compared with rates to other markets and when measured by the cost of the service. Voluminous exhibits prepared by complainant's expert were introduced to show the cost of the service on the Great Northern Railway for the fiscal year ended June 30, 1910. These computations are carefully prepared and are probably accurate on the theories which underlie them. Those theories have, however, never been accepted or approved by the Commission. The one who prepared them admitted that they were open to objection on the ground that the separation of operating expenses between passenger and freight was merely an estimate, and that nothing was assumed as to the correctness of the theories. The cost of the service is but one of the elements to be considered in determining the reasonableness of rates, but even if it were to be accepted as the sole test, we do not think we could accept these figures as conclusive because of the weaknesses above noted and because they apply to but one line of road and are for only one year. They assume also that the cost of service on the Great Northern in North Dakota is the conclusive and accurate measure of the reasonable rates of the other carriers in the other states. The interests of all lines must be considered, and not alone those of the line that can handle the traffic with the least cost. In the *Matter of Proposed Advances in Freight Rates*, 9 I. C. C., 382; *Spokane case*, 15 I. C. C., 376; *Kindel case*, 15 I. C. C., 555. The interests of consumer and of producer must not be lost sight of. *Andy's Ridge Coal Co. v. So. Ry. Co.*, 18 I. C. C., 405.

Many of the exhibits now presented were prepared prior to the decision of the *Advanced Rates case, supra*, and while showing the



situation at that time are not accurate as to the present situation. Comparisons are made between the interstate rates to Superior and the Iowa and Illinois state distance rates. From these exhibits it would appear that the rates to Minneapolis closely approximate the Illinois distance scale. Inconsistencies in the rates of the various lines are pointed out and stress is laid upon the alleged fact that as the distances increase the rates to Minneapolis proportionately decrease, while the rates to Superior increase. It is alleged that the differentials as between Chicago and Superior narrow rapidly to the vanishing point as distances increase, while the differential of 5 cents between Superior and Minneapolis is maintained in many or most instances, making the rates to Superior the combination on Minneapolis.

Other exhibits assume to show the rates and distances from equidistant points in Minnesota, North and South Dakota to Superior and to Minneapolis. A comparison is presented of the rates from North and South Dakota, from which it would appear that for equal distances the rates from South Dakota to Superior are higher than from northern Minnesota and North Dakota, while for like distances the rates to Minneapolis from Minnesota, North Dakota, and South Dakota are substantially the same.

Defendants show that the rates in North Dakota are affected and held down by Canadian competition, and we so found in the *Advanced Rates case, supra*. Complainants say that the only competition offered by Canada would be with the water route through Duluth, and that such competition would not apply at Minneapolis, and that if the Great Northern meets Canadian competition in northern North Dakota it is unjustly discriminatory for it to refuse to give a similar basis of rates from all points on its line in other states. This seems to disregard competitive influences and forces, and to advance the theory that if the Great Northern meets competition in northern North Dakota it must, in order to avoid unjust discrimination, adopt the same rates for the same distances in other states where the same competition is not present. Tariffs on file here carry rail rates from the Canadian northwest to Duluth-Superior and to Minneapolis the same as are carried to Fort William, Ontario. This Canadian grain is moved through and milled in the United States in bond and clearly comes in competition with United States grain. We can not, therefore, take the North Dakota rates as a measure of the reasonableness *per se* of the South Dakota rates.

The interests of Duluth and Superior are practically identical, and what is said as to the reasonableness of rates to one place applies with equal force to the other. We adhere to the conclusions reached in the *Advanced Rates case, supra*, as to the reasonableness *per se* of the rates from South Dakota except as same may be modified by

findings herein of unjust discrimination. What is said as to rates from points in Minnesota applies, of course, only to interstate movements.

Superior's attack upon the lake-and-rail rates on grain products presents from a somewhat different angle substantially the same issues that were considered by us in *Jennison v. G. N. Ry. Co.*, 18 I. C. C., 113, and the *Banner Milling Co. cases*, 13 I. C. C., 31; 14 I. C. C., 398; and 19 I. C. C., 128.

Numerous exhibits are presented showing the receipts and shipments at Duluth-Superior compared with the tonnage passing through St. Marys Fall Canal and the Detroit River, the number of boats of varying tonnage using St. Marys Fall Canal, the number of vessels, the total tons of freight carried by classes, the changes in the number of vessels, the various capacities for a period of years, the average haul through St. Marys Canal; the rates per unit of carriage and per ton per mile, a recapitulation of warehouse facilities, statistics of package freight, a comparison of terminal operating expenses at Duluth-Superior and at other lake ports, and milling-in-transit arrangements.

It is shown that the rates per unit of carriage per ton per mile from 1895 to 1909 have decreased on ore, coal, wheat, and general merchandise, while the rate on flour has increased. Comparative statements of the cost of handling traffic at Chicago, Milwaukee, and Duluth-Superior are presented. It is shown that tug service is necessary at Chicago and not necessary at Milwaukee or Duluth-Superior, and that vessels can be loaded more expeditiously at Duluth-Superior than at Chicago. The differential against Superior and in favor of Chicago is 2.5 cents on domestic shipments of grain products to New York, on proportional rates on grain products to New York, and on export proportional rates on flour. The Superior-New York domestic rate compared with the Chicago-New York proportional rate gives Chicago a differential under Superior of 3.3 cents. Superior argues that if the cost of lake transportation is 10 per cent of the cost by rail a fair differential Superior over Chicago would be .324 cents, and that if it costs less for terminal services at Superior the rates from Superior should be the same as from Chicago. The question presented is not the reasonableness of the lake-and-rail rates on grain products, but is that of alleged unjust discrimination. It is to be noted that by far the greater part of the grain that moves by water is transported by water carriers that are not subject to our act or to our jurisdiction.

On this point defendants show that from Chicago to New York it is less than 1,000 miles by rail through a section of country which produces a dense and profitable traffic, and that from Superior the haul is nearly 500 miles longer. The all-rail rate from Superior to



the seaboard is 25 cents and from Chicago it is 16.7 cents. The lake-and-rail rates from Chicago, Milwaukee, Minneapolis, and other western milling points competitive with Superior are 2 cents less than the all-rail rates. Superior's lake-and-rail rate is 7 cents below its all-rail rate, which fact, defendants state, is a recognition of Superior's location and its resultant cheaper water route. They argue in this as in other cases that the dangers of navigation on Lake Superior are greater than on Lake Michigan; that the westbound traffic on Lake Superior is lighter than on Lake Michigan and that Superior is 96 miles farther by lake from the Atlantic seaboard than is Chicago. It is again urged here, as it was urged in the *Jennison case, supra* that a reduction in this rate from Superior would inevitably be followed by sweeping and general reductions of all rates on grain and grain products from the grain and milling centers in the west and northwest. For these reasons we arrived at the conclusions finally reached by us in the *Jennison* and *Banner Milling Company cases, supra*. This contention of unjust discrimination is not sustained.

The differential Minneapolis over Duluth-Superior on flour lake-and-rail to the Atlantic seaboard is 5 cents, and in the *Jennison case*, Superior and Duluth millers intervened for the especial purpose of preserving that differential. They state that they do not contend that the differential should be increased, as a reduction of the Minneapolis rates might necessarily follow. Duluth contends that the differential over Minneapolis prevents Duluth millers from competing in all-rail territory with the Minneapolis mills. It seems obvious that if rates were made the same to Minneapolis and Duluth on grain which must pass through Minneapolis to Duluth, the rates on flour from Minneapolis through Duluth lake-and-rail should be the same as from Duluth—an adjustment which we are not prepared to prescribe.

Statements are presented showing the production of grain in the territory now considered and that contiguous thereto. In 1909 the production was large and the movement therefore normal, and it probably indicates the markets to which the grain naturally moves under the present adjustment of rates.

The following statement shows the grain production in bushels for the season of 1909:

Kind.	Minnesota.	North Dakota.	South Dakota.	Manitoba-Ontario.
Corn.....	58,812,000	6,045,000	65,270,000	23,000,000
Wheat.....	94,080,000	90,762,000	47,588,000	68,968,000
Oats.....	90,288,000	49,600,000	43,500,000	174,738,000
Barley.....	31,600,000	20,727,000	19,910,000	41,818,000
Rye.....	2,280,000	478,000	578,000	1,172,000
Flax.....	4,500,000	14,229,000	5,640,000	300,000
All grain.....	281,560,000	181,841,000	182,486,000	309,996,000



The following statement shows in bushels the receipts and shipments of wheat, oats, barley, and flax for the crop year of 1909 to and from Minneapolis, Chicago, Duluth, and Milwaukee:

	Wheat.		Oats.	
	Receipts.	Shipments.	Receipts.	Shipments.
Minneapolis.....	81, 111, 410	21, 698, 500	14, 059, 230	15, 323, 120
Chicago.....	26, 985, 112	23, 484, 171	87, 884, 238	77, 288, 653
Duluth.....	58, 084, 971	58, 095, 219	5, 117, 437	5, 179, 727
Milwaukee.....	8, 871, 026	2, 670, 310	8, 908, 700	5, 616, 877

	Barley.		Flaxseed.	
	Receipts.	Shipments.	Receipts.	Shipments.
Minneapolis.....	20, 235, 500	18, 000, 120	7, 600, 010	1, 802, 030
Chicago.....	27, 061, 614	8, 556, 086	1, 199, 119	150, 934
Duluth.....	10, 509, 130	10, 576, 689	10, 127, 291	10, 697, 430
Milwaukee.....	12, 669, 800	5, 208, 061	349, 800	1, 990

From this it is seen that Minneapolis consumed or milled practically 75 per cent of the wheat; that it reshipped more oats than it received; reshipped practically 90 per cent of the barley, and consumed or milled about 80 per cent of the flaxseed. Chicago reshipped the greater portion of the wheat and oats; about 26 per cent of the barley, and consumed or milled nearly all of the flaxseed. Duluth reshipped more wheat, oats, barley, and flaxseed than it received. Milwaukee reshipped one-third of the wheat, over one-half of the oats, and practically the same amount of the barley, and consumed or milled nearly all of the flaxseed.

An average for a period of years would perhaps more accurately indicate the general situation, but it is here seen, as has been seen in previous cases, that Minneapolis is a great consuming or milling market for wheat and flaxseed and a reshipping market for oats and barley; that Milwaukee is a great consuming or milling market for wheat, barley, and flax and a reshipping market for the other grains, and that Duluth and Chicago are great reshipping markets for all grains. Minneapolis is, of course, entitled to all of its natural and geographic advantages, but it is no more entitled to recognition of its proximity to Lake Superior ports than Lake Superior ports are to their location as ports. Whatever weight may have been given in the past to the demands of Minneapolis as a milling center as justifying lower or preferential rates on wheat could not in reason be applied to rates on coarse grains as to which Minneapolis is as much a reshipping market as Duluth-Superior or any of the other markets referred to.

It appears that the barley originating at North Western points in South Dakota amounted to more than one-half of its coarse grain movements from that state and that three-fourths of the barley moved from the northern part of the state. Under the present rate adjustment, of 3,642 cars of this barley moved in 1909, 4 cars went to Lake Superior points; of 3,684 cars in 1908, 23 moved to Lake Superior ports; and in 1907, out of 3,623 cars, 6 went to Lake Superior ports.

Duluth argues that grain or the grain products seeking consuming centers in the east should take the cheap route via the lakes so far as it is available and that it would so move if not interfered with by artificial rate adjustments. There is, of course, a limit beyond which rail competition with water routes may not be carried, but up to every reasonable limit the railroads have an undoubted right to compete with water lines, and, as will later appear, the competitive situation grows keener and more involved by the introduction of new lines of railroad and added competitive conditions as the traffic moves toward the eastern markets and points of consumption.

Each community lays stress upon its natural and acquired advantages. In point of total movement of traffic the Duluth-Superior port is second only to New York. Since 1899 the registered tonnage of the vessels serving Duluth-Superior has more than quadrupled, and the tonnage received and shipped by vessels has increased approximately 1,200 per cent.

The grain-producing northwest receives its coal supply largely through Duluth-Superior, and large new coal docks are now in the course of construction there. The government is doing much work improving the harbor. The elevator capacity there is something over 32,000,000 bushels, and it appears that not more than 21,000,000 bushels has been stored there at any time within the last decade. Duluth is adequately equipped to furnish necessary facilities for competitive buying; it appears that terminal congestion is not experienced there and that there is no extra switching charge there, while there is an extra switching charge of \$1.50 per car at Minneapolis.

In the *Advanced Rates case, supra*, we said:

Minneapolis and Duluth are premium wheat markets, i. e., the consumption demand for wheat by the milling interests of Minneapolis and the shipping demands of Duluth during the period of open navigation, makes the price in those markets, as a rule, higher than in other wheat markets. Minneapolis and Duluth make the price for wheat throughout the spring wheat territory. On account of its geographic, transportation, and commercial situation it is apparent that Minneapolis is the key to the situation.

Duluth submits a statement of the number of days upon which the Duluth and Minneapolis markets, respectively, led in prices during the years 1908 to 1910, inclusive, from which it argues that if Minneapolis is a primary market it is only so in respect to spring wheat, and that Duluth is a primary market not alone during the period of open navigation but throughout the year. Some controversy is presented over the use of terms, Minneapolis laying stress upon the claim that it is "the key to the situation," and Duluth objecting to being called a "gateway." Duluth asserts that Minneapolis is merely a "transforming market," and that while Minneapolis may have the key to the situation it properly belongs to Duluth. It does not appear that our statement above quoted was wrong or incomplete, except, possibly, that Duluth assists in making the price on spring wheat throughout the year. The demand from the east, the southeast, and for export, regulates the price of wheat at both Duluth and Minneapolis. Apparently Minneapolis must pay prices sufficiently high to retain the wheat for milling, and, as a considerable portion of the grain moves through Duluth to the east for milling and export, Minneapolis must pay a price that will effect retaining the wheat for itself as against the east and the exporter and also as against Duluth for the east and the exporter. On equal rates for equal distances each market is given the opportunity to become and remain a premium market if it is willing to pay a premium price.

Minneapolis produced 940,785 barrels of flour in 1878; it produced 6,574,900 barrels in 1887, of which 40 per cent was exported; 16,260,105 barrels in 1902, of which 21 per cent was exported; and 15,795,470 barrels in 1911, of which 7.19 per cent was exported.

In the *Jennison case* it was testified that 80 per cent of the wheat grown in the Dakotas and Minnesota took the same rates to Duluth and Minneapolis. From exhibits now presented by Duluth it appears that during the crop years of 1908 to 1910, inclusive, 44, 42, and 29 per cent, respectively, of the wheat took the same rates to both points.

There is a large production of durum wheat, the major portion of which is grown in northern South Dakota, although southern North Dakota and western Minnesota produce some. The durum wheat is mostly exported, comparatively little of it being consumed in this country, and one firm at Duluth handles 60 per cent of the total exports of that wheat from the United States, moving practically all of it through Duluth. Duluth purchases durum wheat in other markets for export. Minneapolis, however, milled more durum wheat than Duluth received. About 95 per cent of the durum wheat originating on the lines of the North Western goes to Duluth-Superior. Duluth contends that under a fair adjustment of rates it should receive 90 per cent of all the durum wheat produced, but that under the pres-



ent adjustment of rates it is unable to do so. The rates on durum wheat are the same as on any other variety of wheat, and it is therefore seen that the freight-rate adjustment does not always determine the market to which grain will go.

The following are illustrative comparisons of rates and distances:

*From Great Northern points.*

[Rates in cents per 100 pounds.]

From—	To Chicago.		To Minneapolis.		To Duluth.	
	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.
Willmar, Minn.....	15	492	7½	92	10½	198
Granite Falls, Minn.....	16	520	8½	120	11½	233
Hanley Falls, Minn.....	16½	534	9	134	12½	243
Marshall, Minn.....	17½	517	10	154	14	261
Sioux Falls, S. Dak.....	19	547	13	238	17½	345
Yankton, S. Dak.....	20½	570	14½	300	19	407
Benson, Minn.....	17	532	8½	122	11	229
Danvers, Minn.....	17	540	8½	130	11½	237
Appleton, Minn.....	17	554	9½	144	13	251
South Shore, S. Dak.....	19½	605	12	195	15	302
Vienna, S. Dak.....	20½	639	13½	238	17	345
Willow Lake, S. Dak.....	20½	641	13½	246	17½	353
Bancroft, S. Dak.....	20½	653	14	258	17½	365
Osceola, S. Dak.....	21	658	14½	263	18½	370
Huron, S. Dak.....	21	646	14½	284	18½	391

*From North Western points in South Dakota.*

[Rates in cents per 100 pounds.]

From—	To Chicago.		To Minneapolis.		To Duluth.	
	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.
Gary.....	19	558	11½	212	12½	302
Altamont.....	19	570	11½	224	14½	314
Watertown.....	20½	592	13	214	16	321
Brookings.....	19	574	12	227	16½	325
Lake Preston.....	20½	604	13½	257	18½	355
Iroquois.....	21	627	14½	281	18½	378
Elrod.....	21	616	13½	270	18½	344
Redfield.....	22	664	14½	318	19½	392
Aberdeen.....	22	706	14½	287	16½	357
Gettysburg.....	25	739	18½	393	23½	467
Hooker.....	20	547	14	285	18½	377
Yankton.....	20½	570	12½	300	19	407

Defendants show the usual movement of the grain under existing rates and argue that it would be illogical to move it through Duluth and say "Furthermore, Duluth would mean only a semimarket for this grain." Generally speaking, Duluth and Superior are no more semimarkets for the coarse grains than Minneapolis or Chicago. The carrier may not determine by rate adjustments the markets to which grain will move. *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 464. On equal rates for equal distances, no unjust burden is laid upon the carrier, and, under reasonable and nondiscriminatory rates, the producers, dealers in, and consumers of

the grain have a right to select the markets to which they will ship it, at which they will handle it, and the routes via which it shall move.

Attention is called to the fact that witnesses on behalf of the Great Northern and of the Northern Pacific testified in the *Minnesota Rate cases* that there were no substantial differences in the conditions and cost of transportation as between Minnesota and the Dakotas. We found in the *Advanced Rates case, supra*, that the conditions in South Dakota were different from those in some of the other states, and, as we are here considering the rates of numerous carriers that have very short lines or no lines whatever in North Dakota, we do not think they can be concluded by the testimony in the *Minnesota Rate cases* referred to.

Complainant's witnesses testify that the transportation of grain to Minneapolis, Duluth, Milwaukee, and Chicago is conducted under substantially the same circumstances and conditions except as affected by modifying conditions, and that the operating conditions on the northern lines are the same whether the grain moves to Minneapolis or to Duluth-Superior.

A great many exhibits of distances and rates are submitted, each party of course presenting those instances which tend to support its contentions. We have had exhaustive statements carefully prepared by employees of the Commission from official distance tables and tariffs which we think accurately and fairly present the situation, and we shall therefore not especially mention many of those presented by the parties.

Marked emphasis is laid by complainants on the question of distance, and in the Duluth case complainants insist that the distances to Duluth should be computed via the short routes made by use of the junctions with the Great Northern's Yankton line.

In *Omaha Grain Exchange v. C. & N. W. Ry. Co.*, 19 I. C. C., 424, we were asked to establish rates from points in South Dakota, Minnesota, and Iowa to Omaha on the same basis for like distances as the rates to Minneapolis. We did not find justification for such action, but obviously if distance alone were to be the measure of the relationship of rates as between Duluth, Minneapolis, and Milwaukee, the same principle would have to apply to Omaha, and in that event Omaha would have a substantial if not absolutely controlling advantage over other markets from a large portion of this territory. The application of that principle to all points would give each market practically entire control of the grain within a certain radius of that market, and it is not impossible that that control might be taken advantage of in the price paid to the producers.

The territory of production is gridironed both north and south and east and west with lines of railroad, and as grain and grain products form the great bulk of the traffic competition therefor is necessarily



keen. Under these conditions the competition in transportation is affected more by what is termed "cross-country checking" than would be the case with almost any other traffic. The grain must be hauled by wagon from the farm to the railroad station. The price of grain at a country station is determined by the price at some controlling primary market plus the freight rate. If, therefore, a grain grower is located at approximately equal distance from stations on competing railroads, he will haul his grain to that station at which it will command the higher price. These facts lead to a close cross-country check between the different roads in an effort to so align their rates that competing lines shall have no advantage over them.

The rates from North Dakota are controlled by the Northern Pacific and the Great Northern. The Northern Pacific lines are so located that it has deemed it a consistent policy to make the rates the same from producing points on its lines to Minneapolis and to Duluth. Necessarily, from competitive points other carriers must meet this competition or retire from that business. The North Western and the Omaha, while operated as separate companies, are under a substantially common ownership and control. They have several main lines running east and west and north and south in South Dakota, Iowa, southern Minnesota, and northern Nebraska. They have their own lines to Minneapolis, Duluth-Superior, Omaha, Chicago, and Milwaukee. The North Western line extends a short distance into North Dakota, reaching a competitive point with the Northern Pacific at Oakes. It meets the competitive rates from Oakes fixed by the Northern Pacific and carries that Duluth rate through Mankato to Duluth. It contends that the short lines from the territory intermediate between Duluth and the points on its line are not Duluth lines but are Minneapolis lines, which fix the rates to Minneapolis. Complainants contend that any rates made by defendants from South Dakota to Minneapolis on account of competition of short lines should also be given to Duluth, as the competition to Duluth is the same as to Minneapolis, and that it is unjustly discriminatory to recognize this competition in the one case and not in the other.

The Milwaukee also has east and west and north and south main lines in South Dakota, southern Minnesota, and Iowa. Its lines reach Minneapolis, Omaha, Chicago, and Milwaukee. It has a contract with the Northern Pacific for trackage rights from Minneapolis to Duluth-Superior, which contains a provision that in lieu of exercise of this trackage right the Northern Pacific will handle the Milwaukee's traffic to and from Duluth-Superior.

The Great Northern, in addition to its line running southwesterly from Duluth-Superior to Yankton, S. Dak., has lines to Huron and Aberdeen, S. Dak. These lines are crossed at numerous points by



the lines of the Milwaukee, the North Western, the Omaha, and the Minneapolis & St. Louis. The Great Northern has the commanding if not the controlling position from eastern South Dakota to Minneapolis and Duluth-Superior.

The Minneapolis & St. Louis has an east and west line through Minnesota and South Dakota from Minneapolis to the Missouri River and north and south lines in Minnesota and Iowa reaching as far east as Peoria, Ill.

The Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter referred to as the Soo line, has lines northwesterly from Duluth-Superior to Winnipeg, Manitoba, and southwesterly to Brooten, Minn., to a connection with its line northwesterly from Minneapolis through Minnesota and North Dakota. It has its own lines from Minneapolis to Duluth-Superior, to Sault Ste. Marie, Mich., to Manitowoc and Milwaukee, Wis., and to Chicago.

The Minneapolis & St. Louis and the Great Northern have a through route and joint rates to Duluth-Superior via Hanley Falls, Minn.

The Milwaukee has its own lines from points of production on its lines to Minneapolis, and, through the trackage agreement referred to, to Duluth-Superior. This trackage agreement is, we think, tantamount to owning its own line to Duluth-Superior. The North Western and the Omaha are, as we have seen, under a common ownership or control.

Rates from points in Minnesota on the Chicago Great Western Railway are complained of and comparisons of that company's rates are presented. This line, however, does not reach, has no interest in, and owes no duty to Duluth. Any rates to Duluth in which it may participate are purely competitive and beyond its control.

Aside from the question of the reasonableness *per se* of the rates, the principal contention in the Duluth case is the establishment of through routes and joint rates between the other defendants and the Great Northern via the Great Northern crossings. The Milwaukee, the North Western-Omaha and the Soo line complete the haul over their own lines to Minneapolis and to Duluth-Superior, the Milwaukee and the North Western-Omaha lines reaching Superior through Minneapolis. As to a small part of its lines in Minnesota the Soo line would probably haul the Duluth-Superior traffic through Minneapolis.

The law authorizes the Commission to establish through routes, but provides that in doing so it shall not require any company without its consent to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long

as compared with another practicable through route which could otherwise be established. To require these defendants to establish through routes via the Great Northern crossings as prayed would require them to include in such routes substantially less than the entire length of their lines between the termini of such routes. The differences in distances from points of origin on the Milwaukee range from 50 miles on a haul of 411 miles to 151 miles on a haul of 647 miles; those on the North Western range from about 90 miles on a haul of 500 miles to 151 miles on a haul of 647 miles.

The Omaha is the short line from the greater number of its local points; from the points that would be affected by through routes via Great Northern crossings the distance via its own line is about 78 miles greater on a haul of 450 miles. It is testified that there is some delay to this traffic in passing through Minneapolis, and from that it is argued that the routes via Minneapolis are unreasonably long and unsatisfactory.

The law contemplates protecting a carrier in its long haul on the traffic which it originates. This traffic is not perishable; it moves in large volume and continuously, and, all things considered, we do not think under the circumstances here shown that the routes via Minneapolis are unreasonably long or that they afford an unreasonable service, or that these defendants may properly be required to establish the through routes as prayed for. As stated, the Minneapolis & St. Louis and the Great Northern have a through route to Duluth via Hanley Falls. The Minneapolis & St. Louis has no line to Duluth-Superior, and on the basis of satisfactory divisions of the joint rates might readily join in such through route. The fact that it has voluntarily done so can not be recognized as placing the obligation upon the other defendants to take similar action. Complainant invokes the decision in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, as applicable to this situation. It is true that in that proceeding we fixed distance rates on live animals to the various packing houses, but we did not fix those inbound rates via the short routes, as we are here urged to do.

In *Cincinnati & Columbus Traction Co. v. B. & O. S. W. R. R. Co.*, 20 I. C. C., 486, we discussed the provisions of the law and the Commission's authority relative to the establishment of through routes, and said that the Commission will not ordinarily lend its aid to an effort by one carrier to secure traffic that is reasonably tributary to another line by compelling the latter to join with it in through routes and joint rates.

In the Duluth case it is alleged that at Willmar, Minn., the point at which the Great Northern's Yankton line diverges to Minneapolis and to Duluth-Superior, the differential Duluth-Superior over Minneapolis is 3 cents, and that this differential increases as the distance



increases, reaching  $4\frac{1}{2}$  cents at Yankton. This is attacked as unreasonable and unjustly discriminatory on the ground that the maximum differential should be at Willmar, and that it should be reduced as the distance toward Yankton increases. The Great Northern contends that the differential at Willmar would be  $3\frac{1}{2}$  cents instead of 3 cents were it not for certain competitive conditions, but inasmuch as this line of the Great Northern is admittedly the short and controlling line, and inasmuch as its line from Huron also passes through Willmar to Minneapolis and to Duluth-Superior, and as it appears that this differential existed before the advent of the competition of the Soo line, we are not impressed with the force of this argument. We think that in view of the geography of these lines and the facts here shown that the differential of 3 cents at Willmar is reasonable, and we find that the present rates are unreasonable and unjustly discriminatory against Duluth to the extent that the rates to Duluth from points on this line west and south of Willmar to Huron, Yankton, and Sioux City, inclusive, exceed the present rates from the same points to Minneapolis by more than 3 cents.

It appears that in some instances the rates to Duluth are higher from points on one branch line than from equally distant points on another branch of the same railway, although the shipments pass through the same point of convergence of the branches. We think that all instances of this kind should be governed by the principle just stated as to the differentials from points on the Yankton line of the Great Northern.

The proportional rate on grain from Minneapolis to Duluth-Superior is 5 cents, applicable on shipments from beyond Minneapolis. This rate therefore contemplates the performance of terminal service at Minneapolis if same is desired or demanded by the shippers. In many instances the lines that reach Duluth-Superior via Minneapolis make their Duluth-Superior rates 5 cents higher than the Minneapolis rates, and this is complained of as unreasonable. In some cases the through rates to Duluth-Superior exceed the Minneapolis combination, which is manifestly indefensible.

In view of the extra cost of the terminal services, we think, and find, that through rates from points of origin on the lines of the Milwaukee, of the Soo line, and of the North Western-Omaha systems to Duluth via Minneapolis should in no case be more than 4 cents higher than to Minneapolis.

The Milwaukee, the Soo line, and the North Western-Omaha systems have their own lines to Milwaukee and to Chicago. There is no substantial difference in the transportation conditions or in the cost of transportation which justifies higher rates for like distances via those lines from points on their respective systems in South Dakota, Iowa, and Minnesota to Duluth-Superior than are



contemporaneously maintained by them to Milwaukee or Chicago, and we find that it is unjustly discriminatory against Duluth and Superior for defendants to maintain higher rates from this territory to Duluth-Superior than they contemporaneously maintain to Milwaukee or Chicago for equal distances.

Manifestly there is no justification for other defendants joining in through routes and joint rates from the states just named to Milwaukee and Chicago that are less for like distances than they contemporaneously charge to Duluth-Superior.

Many instances of violation of the long-and-short-haul provisions of the act are referred to. Exhibits show that apparently this requirement is conformed to so far as Chicago, Milwaukee, and Minneapolis are concerned and disregarded with respect to Duluth. This question was considered to some extent in the *Advanced Rates case, supra*. Defendants' applications for relief from the provisions of the fourth section of the act as to grain rates to Minneapolis and Duluth have not as yet been heard. In the instant cases we have some statements which seek to explain the reasons for the departures from that principle. Defendants have a right to be heard on their applications and nothing herein is to be taken as determinative of such questions or as prejudicing those applications, except in so far as, under sections 2 and 3 of the act, we require equal rates for equal distances, and no higher differentials from points on a carrier's branches beyond a junction point through which shipments must pass than are maintained at such junction.

Milwaukee seeks the establishment of rates to Milwaukee from the territory lying substantially directly west of Milwaukee in South Dakota, southwestern Minnesota, and northwestern Iowa, not higher than are contemporaneously charged to Duluth. The northern boundary of this territory is the Winona and St. Peter line of the North Western from Sanborn, Minn., to Pierre, S. Dak., and the western boundary is the line of the North Western from Iroquois to Yankton, S. Dak. Generally speaking, the rates from this territory are higher to Milwaukee than to Duluth by from one-half cent to 3 cents. The difference in distance in favor of Duluth is as much as 150 miles, but in the majority of instances the stations on the Milwaukee are but from 5 to 8 miles more distant from Milwaukee than from Duluth.

In numerous instances where there is practically no difference in distance the rate is from 1 to 2 cents lower to Duluth than to Milwaukee. Milwaukee contends that this territory is naturally, geographically, and commercially tributary to it; that it lies directly west of Milwaukee; that Milwaukee is directly in the line of least resistance toward the final markets in the east and southeast; that the volume of this traffic tends generally toward Chicago and the east,

and that the lake rates on grain to the Atlantic seaboard are practically the same from Milwaukee and Duluth. Complainant alleges that the present adjustment of rates prevents it from obtaining its proper share of the grain in the territory described; that Milwaukee has substantially all of the advantages of geographical location and commercial importance to which Duluth lays claim; that it is a lake port and a primary market of importance as well as a large consuming and milling market, and that its ability to handle a larger tonnage of grain is unquestioned.

In 1898 the Commission decided *Chamber of Commerce of the City of Milwaukee v. C., M. & St. P. Ry. Co.*, 7 I. C. C., 481, in which unjust discrimination was alleged against Milwaukee as compared with Minneapolis, and found that just and reasonable differentials would be obtained by applying the interstate distance tariff of the Milwaukee and the North Western to the short-line mileage from the several points of shipment to Minneapolis and Milwaukee. The Commission's order in that case was but partially complied with, and Milwaukee contends that it is still resting under disabilities which the Commission then attempted to rectify.

Milwaukee is approximately 160 miles nearer to the Atlantic seaboard via lake-and-rail than is Duluth. It contends that Milwaukee and Duluth are similarly situated on the Great Lakes; have equal facilities for handling the grain; that Milwaukee is nearer to the consuming markets, and that Milwaukee and Duluth should be on a parity. In this contention, however, this complainant urges that differences in inbound rail distances of not more than 125 miles should be disregarded. To this contention we are not prepared to accede. The carriers might voluntarily disregard such distances if by so doing they did not create or maintain unjust discrimination, but we do not think that in this situation they may properly be required to do so.

In addition to the lines of the North Western and the Omaha, this particular territory of origin is traversed by several divisions of the Milwaukee. Each of these systems, as has been stated, has its own lines to Minneapolis, Duluth-Superior, and Milwaukee. It appears that there are no transportation conditions which justify higher rates to Milwaukee than are contemporaneously maintained for like distances to Duluth. A traffic officer of the North Western testified that except in instances where the adjustment is affected by rates fixed by other lines to Duluth, its Duluth-Superior rates are made on the basis of 5 cents over the rates to Minneapolis and its rates to Chicago on the basis of  $7\frac{1}{2}$  cents over Minneapolis on wheat, and  $6\frac{1}{2}$  cents on coarse grain. He says that at the time these differentials were established the vessel charters out of Duluth were supposed to be somewhat higher than out of the Lake Michigan ports,



and it was thought that the differentials would enable the grain to be distributed through the gateways on a reasonable parity, so as to give the producing section the benefit of different markets and the markets an opportunity to participate in the business on approximate equality. It is alleged that the present adjustment equalizes the charges through the different markets to the Atlantic seaboard and that that adjustment should be sanctioned and perpetuated. We declined to approve that principle in *Investigation of Alleged Unreasonable Rates on Meats, supra*.

Milwaukee disagrees with Duluth's contention that rates should be fixed on the basis of short-route distances, and asserts that the establishment of that basis would revolutionize and demoralize the rate-making business of the country, and eliminate all modifying conditions usually considered in determining the reasonableness of rates. Milwaukee's contention is for equal rates for equal distances via the lines over which the traffic moves.

It appears that the average rate per ton per mile from 56 stations on the North Western from Sanborn, Minn., to Pierre, S. Dak., and in South Dakota, south of Iroquois, is 7.01 mills to Milwaukee, 10.3 mills to Minneapolis, and 8.48 mills to Superior-Duluth. The average distances from these stations are: To Milwaukee 583.4 miles, to Minneapolis 278.6 miles, and to Superior 450.6 miles. We find that it is unjustly discriminatory against Milwaukee for defendants in the Milwaukee case to maintain from the territory described higher rates to Milwaukee than they contemporaneously maintain for like distances to Duluth, distances computed by the short line over its own rails by the originating system, and considering the North Western and the Omaha as one system. It may be that giving Milwaukee the benefit of like rates for like distances will bring to it some disadvantage as compared with rates now in effect from some points, but if that be the effect of the application of the principle Milwaukee can not be heard to complain.

Intervener the Chicago Board of Trade avers that if reductions in rates are made to other markets and corresponding reductions are not made to Chicago, it will bring great and lasting injury to Chicago. It favors the contention of Milwaukee, but urges that in determining the issues in these cases the entire situation should be considered.

The territory of production here considered is essentially an agricultural district. It has but little manufacturing except the milling of grain. It appeared in the *Jennison case* that the flour mills in these states have a milling capacity that exceeds their entire wheat crop. Mills are located at many points other than the so-called primary markets in whose interests these complaints are brought, and every such mill, as well as the locality in which it is situated, is



directly interested in and must be affected by the conclusions here reached.

The enormous quantity of grain grown in this territory necessarily finds its principal market of final consumption in the more densely populated sections of the east, in the southeast where comparatively little grain is grown, and in foreign countries to which it is exported through the Atlantic and gulf ports.

Grain and its milled products are more universally used by the population of the country than any other product or commodity that is transported. Competition between primary markets is keen, and a slight difference in the price of the grain or a slight difference in the freight rate thereon will frequently determine the market to which it will be shipped.

Complainants suggest that the carriers' transportation cost for moving grain is less than for the milled products, and that therefore grain should be shipped to milling points near the markets of consumption of the products. They say that mills in the east should have a chance to mill this wheat, as well as Minneapolis; that the rate adjustment should not attempt to sustain an industry that was established at an illogical point, and that the original excuse for milling at Minneapolis, water power, has long since disappeared. The mills, the industry, and the investments, however, are still there and should not be destroyed by a rate adjustment unless such action is essentially and absolutely necessary. Grain is generally shipped in bulk and the milled products are generally shipped in packages. It is a matter of common knowledge that claims for loss of grain in transit are numerous and aggregate large sums. It is not at all certain that heavier car loading of grain than of grain products compensates the carriers for this loss. In any event, as the tariffs show, it is a very general practice to apply substantially the same rates to grain and the products thereof. In some instances the grain rates are slightly higher than the products rates, and in other instances the converse is true, but the statement that the rates on grain and grain products are substantially the same is generally and approximately correct. If the rates were so adjusted as to induce the shipment of the grain to the milling points nearest the points of ultimate consumption, it seems inevitable that it would destroy practically all of the milling interests in the grain-growing states. It is obvious that if some carriers established that policy, other carriers would find it to their interest to pursue a different policy and encourage as they have done in the past the establishment and maintenance of manufacturing industries or centers on their lines. Every manufacturing industry contributes to the prosperity of the railroad that serves it beyond the mere transportation of raw material and finished product to and from the plant.

Millers manufacture and establish a demand and market for certain brands of milled products. This is accomplished by blending different kinds of wheat for certain standards of flour, and of blending different kinds of grain in different proportions for standard qualities of feed. This necessitates bringing in grain other than that grown in the immediate vicinity of the mill, and variations in crops or crop failures in different localities affect and change the movement of grain from different localities from year to year.

The practice of permitting milling of grain in transit is almost universal throughout the country. Various details are applied in different sections or by different carriers, but the substantial effect is to permit the grain to be shipped to, and the product from, the milling point under a total charge which equals the through charge on grain from the point of origin of the grain to destination of the product. In some instances a slight additional charge is made for the transit privilege. It is argued that transit privileges granted at Minneapolis, and proportional rates applicable on grain and grain products forwarded from Minneapolis, give Minneapolis an unfair advantage over Duluth. It is stated that large quantities of wheat are brought from Missouri River points in Nebraska, Kansas, and Missouri to Minneapolis, the product of which moves to Chicago and the east on proportional rates. This is stated to be for the purpose of permitting the Minneapolis millers to make and maintain standard brands of flour for which they have built up extensive markets. It is argued that this wheat is mixed with other wheat which enjoys no transit privilege and that the combined product enjoys an out-bound transit rate.

The Commission has recognized the impracticability of preserving the identity of each carload of grain, and manifestly it is impossible to preserve the identity of grain when it is mixed with other grain for producing a blended milled product. Every grain market has its established grades of grain, which are frequently produced by processes of grading in which different carloads of grain are mixed. The Commission has not felt that it should condemn all milling in transit; it recognizes the commercial necessity of mixing grain for grading and milling purposes, but we see no insurmountable or serious difficulty in the way of the establishment of just, reasonable, and non-discriminatory rates and proper regulations governing transit privileges, or of so policing such transactions as to terminate and prevent the irregular and unlawful practices which have been resorted to in the past in connection with transit. The responsibilities and liabilities of carriers under transit rules and the policing thereof were recently decided in the district court of the United States for the western district of Michigan, in *United States v. G. R. & I. Ry. Co.*



As this grain moves from point of origin toward the east and southeast it reaches or comes within the several spheres of influence of certain centers or primary markets. For example, grain is shipped in large quantities to Minneapolis and reshipped from Minneapolis to Chicago or Milwaukee and from thence to various destinations in the east and southeast. Several railroads have lines from Minneapolis to Chicago and no lines north or west of Minneapolis. If they participate in the transportation of this tonnage, as they always have insisted upon doing and as they undoubtedly will always insist upon doing, they must take out from Minneapolis grain that comes in on some other road. There are numerous railroads with lines east and southeast from Chicago that have no lines west or north of Chicago, and if they participate in the movement of this traffic they must take out from Chicago that which comes in on some other road. In every instance of a carrier so situated an additional competitive influence is injected into the situation.

In addition to this, there are large milling interests at Chicago, Milwaukee, Akron, Buffalo, etc., which are competing with each other for the grain grown in this territory and in Kansas and Nebraska. The exporters at our Atlantic and Gulf ports are competing for the grain and the grain products for export, and so the competition in transportation which begins with the cross-country check in the grain fields increases and intensifies through all the primary markets, the radiation of additional carriers' lines, the various grain markets, milling centers, and export ports to the points of final consumption, whether in this or a foreign country.

Our conclusions as to what is to be required of defendants may be summarized as follows:

1. The rates from South Dakota, Minnesota, and Iowa to Duluth-Superior should not exceed the rates to Milwaukee or Chicago for equal distances.

2. The rates to Milwaukee from the territory involved in the Milwaukee case should not exceed the rates to Duluth-Superior for equal distances.

3. Distances are to be measured by the short line of the originating system having lines to Duluth-Superior and to Milwaukee or Chicago, the North Western and the Omaha being considered as one system and the Milwaukee as having its own rails to Duluth.

4. The Great Northern's differential at Willmar as between Minneapolis and Duluth-Superior should not exceed 3 cents, and that differential should not be exceeded from any point on the Great Northern beyond Willmar to and including Sioux City, Yankton, and Huron.

5. Where, because of difference in distance, the rates are different from a junction point of a carrier's own main lines or branches,



differential should not be higher from points beyond from which the traffic moves through that junction than at such junction point.

6. Through rates via the Soo line, the North Western-Omaha system, or the Milwaukee system to Duluth-Superior via Minneapolis should in no case exceed the rates from the same points to Minneapolis by more than 4 cents.

7. Where distances are not equal the differentials should fairly reflect the differences in distance, and, except from points where rates are held down by actual competition, the rates should grade up gradually and evenly by distance.

The rates here in question are from points of origin to rival primary markets. Some of those markets reship the grain and some of them mill it and forward the product. The function of the market is not the controlling element in determining the reasonableness of rates. The conditions and circumstances of transportation here are highly competitive and at the same time are, from a transportation standpoint, so substantially similar as to present a case in which other things are so nearly equal as to make distance controlling. The transportation of the grain or of its products from these primary markets presents a different situation, which would probably be controlled by different considerations.

There are many details of competitive conditions which invite departures from the long-and-short-haul principle, and of necessary cross-country checks, which are not disclosed on the record and which could not be fully disclosed except upon a careful and complete rate check. The carriers have the information and the facilities for making such check, and, following the principles herein announced, can check in these rates harmoniously.

Except as reductions in rates are specified herein it is not our intention to require an adjustment which leaves defendants a substantially less revenue on this traffic than they now receive. The reasonableness of the general level of these rates was passed upon in the *Advanced Rates case, supra*. It is therefore not intended that the readjustments herein required shall operate to increase the revenues from this traffic. Where like rates to different points for like distances are required they may be established by reducing the higher rates, or may be a fair mean of the existing rates, except that the discrimination found against Duluth-Superior in Great Northern rates from points on its Yankton line south and west of Willmar must be removed by reducing the Duluth-Superior rates to not more than 3 cents over the present Minneapolis rates, which are in themselves advanced rates voluntarily established, and recently approved by us.

Orders will be entered in conformity with these views.

No. 4573.

OMAHA GRAIN EXCHANGE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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*Submitted May 30, 1912. Decided June 10, 1912.*

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Rates on coarse grain from stations on defendant's line, Canton, S. Dak., to and including Elk Point, S. Dak., found to be unjustly discriminatory against Omaha, Nebr., and unduly preferential to Minneapolis, Minn. Reasonable relationship of rates prescribed.

*Edward P. Smith* for complainant.

*J. N. Davis* and *H. E. Pierpont* for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In *In the Matter of the Investigation of Advances in Rates by Carriers on Grain, Grain Products, etc.*, 21 I. C. C., 22, we approved certain advanced rates on grain to Minneapolis, etc., and condemned proposed advanced rates to Omaha. We prescribed reasonable maximum rates to Omaha from a portion of South Dakota. Under that decision the rates on coarse grain to Omaha from Chicago, Milwaukee & St. Paul stations, Canton to Elk Point, S. Dak., were all established at 11½ cents, except from Elk Point, where the rate was 11 cents. Rates are stated herein in cents per 100 pounds.

The rate voluntarily established by defendant to Minneapolis from Canton is 13 cents and from all of the other stations from Canton to and including Elk Point it is 11½ cents.

From Canton, the most distant of these stations from Omaha, the distance to Omaha is 226 miles, and to Minneapolis it is 322 miles. From Elk Point, the nearest of these stations to Omaha, the distance to Omaha is 176 miles, and to Minneapolis it is 347 miles. Complainant alleges that this rate adjustment is unjustly discriminatory against Omaha and unduly preferential to Minneapolis. It contends that Omaha is deprived of its natural advantage of proximity to these grain-producing points and that the adjustment is not in harmony with the principle underlying our decision in the *Advanced Rate case, supra*.

24 I. C. C.

Defendant denies the allegations of the complaint. It alleges that the adjustment is within the letter as well as the spirit of the Commission's decision.

From Hawarden, Iowa, one of the stations in question, the Chicago & North Western carries a rate to Omaha of 8.7 cents, while defendant's rate is 11½ cents. Complainant urges that defendant should be required to meet the competition of the North Western rate, but to that we are not prepared to assent. It is, within reasonable limits, optional with a carrier whether or not it will meet the competition of another carrier.

It will be noted that the rate to Minneapolis from Canton is 13 cents while from the other stations south of Canton it is but 11½ cents. It is alleged, and not disputed, that in order to avoid violations of the fourth section of the act grain from some of these stations is hauled around Canton via Hudson and Rock Valley.

Omaha is at a disadvantage as compared with Minneapolis on through rates to the east from these points, and it has an advantage over Minneapolis in through rates to the southeast. But it is entitled to an advantage to the southeast for the reason that via defendant's lines it is 96 miles nearer to Canton than is Minneapolis and is 171 miles nearer to Elk Point than is Minneapolis.

Defendant's witness states that he does not believe the grain would move to Omaha from Hawarden even if defendant met the North Western's rate, but he admits that if that competition were met it might have the effect of diverting shipments from Minneapolis. He states that the rates from these stations to Minneapolis are made for competitive reasons and that competition has nothing to do with the making of these rates to Omaha. The only reason which he advances for favoring Minneapolis is that when the equipment goes to Omaha it is apt to be reloaded and sent off defendant's line, while at Minneapolis it is reloaded and sent over defendant's line. Inasmuch as defendant has lines from Minneapolis and also from Omaha to Milwaukee and Chicago, it is not apparent why it can not control the routing of its own cars at Omaha as well as at Minneapolis.

Prior to 1908 the rates from these stations to Omaha were made on the basis of the Iowa distance tariff, plus the Omaha-Council Bluffs bridge toll. These rates ranged from 7½ to 9½ cents. Defendant's line between Canton and Elk Point crosses the state line into Iowa and back into South Dakota. When it was decided that under these circumstances the shipments were interstate these rates were advanced to 11½ cents.

Computing the average distance from these stations to Omaha as 202.8 miles, the rate per ton per mile is 11.3 mills; and on the average distance of 325.4 miles to Minneapolis the rate per ton per mile is 7.1 mills.



In *Omaha Grain Exchange v. C. & N. W. Ry. Co.*, 19 I. C. C., 424, Omaha sought the establishment of rates to Omaha the same as were accorded to Minneapolis for like distances. That prayer was not granted.

This whole situation has just been considered in *Superior Commercial Club v. G. N. Ry. Co.*, 24 I. C. C., 96, and we there decided that by the lines of this defendant the transportation conditions are so substantially alike from points in South Dakota, Minnesota, and Iowa to Chicago, Milwaukee, Minneapolis, and Duluth-Superior that distance must be considered as controlling, and in general have required that the rates from that territory to those markets shall be the same for like distances measured over the short lines of originating defendants. We do not here decide that the same principle shall be adopted as to Omaha, but we do find upon consideration of the whole record that the present rate adjustment from the stations in question is unjustly discriminatory against Omaha and unduly preferential to Minneapolis, and that the differential on coarse grain in favor of Omaha as against Minneapolis from points on defendant's line from Canton to and including Elk Point should not be less than that now in effect at Canton,  $1\frac{1}{2}$  cents per 100 pounds.

This complaint alleges that the rates to Omaha are unreasonable. Substantially no evidence is presented on that question and inasmuch as they are the rates so recently fixed by us as reasonable, we can not now hold that they are unreasonable *per se*.

An order will be entered requiring defendant to remove the discrimination here found.

24 I. C. C.

No. 3910.

BUSINESS MEN'S LEAGUE OF ALBERT LEA, MINN.,  
v.  
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted November 10, 1911. Decided June 8, 1912.

1. It must be taken as the conclusive opinion of this Commission that the twin-city rates are directly and vitally affected by the rail-lake-and-rail rates via Duluth and Superior and the all-rail rates via the Canadian Pacific and the Soo line.
2. The competitive conditions influencing the rates from the east to twin cities are not present at Albert Lea, Minn., and the exaction of the present differentials over twin cities on traffic from the east to Albert Lea is neither unreasonable nor discriminatory.

*James Manahan* for complainant.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*George W. Seevers* for Iowa Central Railway Company and Minneapolis & St. Louis Railroad Company.

*R. V. Fletcher* and *A. P. Humburg* for Illinois Central Railroad Company.

*W. P. Trickett* for Minneapolis Traffic Association, intervener.

REPORT OF THE COMMISSION.

*McCHORD, Commissioner:*

In this proceeding complainant seeks to have applied to Albert Lea, Minn., the Minneapolis-St. Paul class rates, all rail, from the Atlantic seaboard. The petition also challenged the rail-lake-and-rail rates, but this feature of the case was abandoned at the hearing. Traffic to Albert Lea from points east of Buffalo and Pittsburgh takes the following differentials over Minneapolis and St. Paul, both all-rail and rail-lake-and-rail:

	Class 1.	Class 2.	Rule 25.	Class 3.	Rule 26.	Class 4.	Class 5.	Class 6.
Differential, cents....	15	12	10	10	8	7	4	4

This differential scale we are asked to remove. Discrimination against Albert Lea in favor of the twin cities, together with the exaction of unreasonable rates, is alleged. The defense is that the twin-city rates are fixed by the lake-and-rail rates via Duluth and the all-rail rates via the Canadian Pacific and the Minneapolis, St. Paul & Sault Ste. Marie, commonly known as the Soo line; that the rates to Albert Lea are not unreasonable and that none of the conditions affecting the twin-city rates obtains at Albert Lea.

Albert Lea, a place of some 6,000 inhabitants, is situated in the southern part of Minnesota about midway between the eastern and western boundary lines of the state. It is 101 miles south of St. Paul-Minneapolis, herein referred to as the twin cities, and is served by five railroads. The Minneapolis & St. Louis extends through it southward into Iowa from the twin cities; it is the northern terminus of the Iowa Central, extending southeast to Peoria, Ill.; the Illinois Central, running west from Chicago, has a branch from Waterloo, Iowa, which terminates at Albert Lea; the Chicago, Milwaukee & St. Paul has an east and west line which passes through Albert Lea in its course across southern Minnesota from La Crosse, Wis., to South Dakota; and the Chicago, Rock Island & Pacific serves it with its line from twin cities to Chicago. Complainant's chief contention is that traffic is hauled via Chicago through Albert Lea to the twin cities at rates lower by the foregoing differentials than traffic to Albert Lea, but it is well here to note that the Rock Island is the only road to which the allegation applies. The only other road reaching twin cities, Albert Lea, and Chicago is the Chicago, Milwaukee & St. Paul, over which, however, no traffic from Chicago to Minneapolis would move via Albert Lea.

The history of the twin-city rates is elaborately reviewed in the *Burnham-Hanna-Munger case*, 14 I. C. C., 299, and will not be here discussed, except to say that we are fully convinced that these rates are the result of keen competition between the all-rail carriers and the rail-lake-and-rail lines, as well as between rival all-rail northern and southern routes. It has always been the endeavor of the western lines to keep the rates to Albert Lea and twin cities at the Chicago combination, 75 cents to Chicago and 60 cents beyond. As early as 1886, however, we find a 40-cent scale applying between Chicago and the twin cities. This scale varied between 31 and 60 cents until 1897, when the Soo line designated Gladstone, Mich., its gateway on traffic from the east and established a proportional rate of 40 cents, first class, to twin cities, other classes in proportion. This action was followed by the other lines in May of the same year, and resulted in a through rate of \$1.15 to the twin cities. Even then there was an effort on the part of the Chicago-to-twin-cities lines



to increase the proportional rate, but in 1901 further resistance ceased, the 40-cent proportional scale was generally adopted, and the twin-city rates fixed at \$1.15.

As stated in the *Burnham-Hanna-Munger case, supra*—

It is thus seen that these carriers have made numerous persistent and vigorous efforts to maintain proportional rates between Chicago and the twin cities higher than the 40-cent scale, and that they have been unable to do so. \* \* \* The controlling influence of the water and Canadian competition over the rates from the seaboard to the twin cities is apparent, and it is also apparent that the defendant carriers west of Chicago must meet the force of that competition. Their local class rates from Chicago to the twin cities are on the basis of 60 cents, first class, as compared with a 55-cent scale via lake-and-rail from Chicago to the twin cities via Gladstone and the Soo line, and a 50-cent scale from Chicago to the twin cities via Duluth.

It was not until 1904 that the \$1.35 rate to Albert Lea was reduced, but in that year the Minneapolis & St. Louis Railroad, reaching Albert Lea from the north, established the present differentials to apply to Albert Lea over twin cities. This necessitated similar action on the part of the carriers entering Albert Lea from the south, and in 1905 the present basis was established via all lines. This had the effect of reducing the Albert Lea rate 5 cents on first class, with corresponding reductions in other classes. Albert Lea is 101 miles farther removed from the head of the lakes than the twin cities and is not reached by any of the rail carriers responsible for the 40-cent Chicago-to-twin-cities scale. It is therefore clear that the competitive influences which have fixed the twin-city rate do not obtain at Albert Lea. Via the Rock Island, the only single road which carries traffic from Chicago through Albert Lea to twin cities, the distance from Chicago to twin cities is 523 miles, while the Chicago & North Western route is only 400 miles. The Rock Island completed its route into twin cities in 1902, and in addition to the competitive conditions already described had also to meet the competition of the short lines. Complainant has characterized the twin cities adjustment as artificial and asserts that there is no excuse for the different rates to Albert Lea. It must be taken as the conclusive opinion of this Commission that the twin-city rates are directly and vitally affected by the rail-lake-and-rail rates via Duluth and Superior and the all-rail rates via the Canadian Pacific and the Soo line. With a rail-and-lake rate of 68 cents, first class, New York to Duluth, and the application of the frequently approved differential of 15 cents to twin cities, these points enjoy a rail-lake-and-rail rate of 83 cents. To hold that the rail lines, at the full combination via Chicago of \$1.35, could compete with the lake carriers would be to assert what experience has disproved. The local first-class rate twin cities to

Albert Lea at the time of the hearing was about 31 cents, which would make the present all-rail combination on twin cities 16 cents higher than the existing differential. Our opinion is that the twin-city rates are forced by competitive conditions entirely dissimilar from any existing at Albert Lea and that the present differential extends to Albert Lea the benefit of this competition to the extent of 5 cents per 100 pounds. Complainant's contention as to unjust discrimination is therefore not sustained.

The attack upon the reasonableness *per se* of the rates was based almost entirely upon a comparison of the divisions received by the carriers west of Chicago on traffic to Albert Lea and to the twin-cities from the east and locally from Chicago. All of these comparisons, of course, showed that at the local rate of 60 cents from Chicago to both Albert Lea and twin cities, the revenue received by the carriers to Albert Lea was considerably in excess of the divisions received by the same carrier on traffic transported to Albert Lea destined twin cities. They further showed considerable disparity in the divisions received west of Chicago on traffic from the east to Albert Lea proper, and to Albert Lea when delivered to a connecting carrier for movement to twin cities. Such an argument, however, gives false probative force to divisions of joint rates and, under the peculiar conditions here presented, well illustrates the wisdom of our repeatedly expressed aversion to accepting such comparisons. To fix the Albert Lea rate with reference to the divisions received from Chicago to Albert Lea on traffic for twin cities, would be absolutely to ignore the competitive influences which we have already considered and to extend to Albert Lea rates based upon conditions that do not there exist. In other words complainant's attack necessitates an inquiry into the reasons which may compel the twin-city divisions and brings us directly back to a consideration of the dissimilarity of circumstances and conditions hereinbefore discussed. To all of the points in this general territory, the rates are based either upon Chicago or the Mississippi River. The distance from New York to Albert Lea is 1,294 miles, and the revenue per ton per mile at the first-class rate is 2 cents. To Missouri River cities, via St. Louis, the distance is 1,403 miles, and via Chicago 1,352 miles, while the rate, based on the *Burnham-Hanna-Munger case*, is \$1.39, yielding 1.9 cents per ton per mile via St. Louis and 2 cents via Chicago. Similar comparisons with other class rates show the per-ton-per-mile revenue to Albert Lea to be practically identical with that to Missouri River cities. The following table illustrates how the rates, in cents per 100 pounds, based on Chicago grade up toward Albert Lea until the full \$1.35 scale is reached at Glenville, Minn., south of Albert Lea, and the reduction to \$1.30 is not made until we get to Albert Lea where some of the twin-

city or lake competition is reflected because of the 15-cent scale of the Minneapolis & St. Louis:

From New York, N. Y., to—	Class.					
	1	2	3	4	5	6
Davenport, Iowa.....	97	84	66	47	40	33
Stockton, West Liberty, and Elmira, Iowa.....	117	101.5	79.5	56.5	45.5	38
Morse to Cedar Rapids, Iowa, inclusive.....	119.5	103.5	81.5	58	46	39.5
Palo to Waterloo, Iowa, inclusive.....	121.5	105	82.5	59	47.5	40
Cedar Falls, Iowa.....	122	105.5	83	59	47.5	40
Norris to Clarksville, Iowa, inclusive.....	126	108	84.5	60	49	41
Packard to Nora Springs, Iowa, inclusive.....	132.5	112	87.5	60	51	42
Rock Falls to Northwood, Iowa, inclusive.....	133	112.5	88	61	51	43
Glenville to Gordonville, Minn., inclusive.....	135	115	90	60	50	42
Albert Lea, Owatonna, and Faribault, Minn.....	130	111	86	60	50	42
Minneapolis and St. Paul, Minn.....	115	99	76	53	46	38

Under all the circumstances we are unable to find that the rates complained of are unreasonable. The complaint will be dismissed, and it will be so ordered.

No. 3853.

JOHN W. BOILEAU ET AL.

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

*Submitted May 16, 1912. Decided June 4, 1912.*

Complainants' application for modification of order denied.

*Wade H. Ellis and Louis D. Brandeis* for complainants.

*Clyde Brown* for New York Central lines.

*A. P. Burgwin and F. D. McKenney* for the Pennsylvania Company and others.

# REPORT OF THE COMMISSION ON APPLICATION FOR MODIFICATION OF ORDER.

MEYER, *Commissioner*:

This case was decided on March 11, 1912, and the report of the Commission, 22 I. C. C., 640, ordered a reduction, effective May 1, 1912, from 88 cents per net ton to 78 cents, in the lake-coal rate from the Pittsburgh, Pa., district to Ashtabula, Ohio. The petition for modification of the order made on that date was filed on behalf



of the complainants and was argued before the Commission on May 16, 1912. It prays that a further reduction be made in said rate "in such an amount as shall be just and reasonable."

The various reasons advanced by petitioners for requesting a modification of the order are based upon two general propositions: (1) That the Commission intended to establish certain differentials which the carriers have since changed by means of reductions in the rates from certain competitive fields and the failure of other carriers to advance rates in so far as these proposed advances had been authorized by the Commission. (2) That the wages paid to miners in the Pittsburgh district have been increased 5 cents per ton since the making of the order, while in the West Virginia fields the cost of production, it is claimed, has not increased since that date. Mention is also made of a net increase of about 1 cent per ton in the loading charge at the lake ports. This charge, however, was not before the Commission in the *Boileau case*, and therefore no further mention of it will be made herein.

The general ideas underlying the petition for modification of order, as we understand them, are suggested in the following quotation:

In view of the actual adjustments of all coal rates made by the defendant carriers and other carriers since the decision of the Commission in this case, a situation has arisen materially differing from that which was presented to the Commission \* \* \* and such new situation as now presented calls for a reconsideration of the amount of reduction that should be made in said rate.

In the trial of this case the question of differentials was given little or no weight by the petitioners. Allegations in the petition regarding unjust discriminations were supported in the testimony chiefly by ton-per-mile comparisons with the rates from rival coal fields, especially certain of the West Virginia fields. Emphasis was laid upon the Pittsburgh rate as a rate independent of all other rates; and both on direct and on cross examination witnesses for petitioners were careful to avoid reference to the differentials. The obvious purpose of this tendency in the hearing of the case was to confine the Commission, if possible, exclusively to the rate from the Pittsburgh district to Ashtabula Harbor, irrespective of the relation of this rate to other rates and its effect upon rival coal fields and the carriers serving them. In the consideration of this case the Commission naturally was obliged to take into view not only the Pittsburgh rate, but also to survey the entire field within which that rate makes its influence felt on carriers and operators alike and to formulate its conclusions accordingly. In the petition for modification of order, petitioners give prominence to the matter of differentials and "all coal rates made by the defendant carriers and other carriers \* \* \*," although demanding a further reduction in the Pittsburgh rate. The

petition also presumes certain bases of the Commission's decision, which it is not necessary to discuss here.

The intense competition between the coal fields of Pennsylvania, Ohio, and West Virginia is apparent. The resulting waste in mining is equally obvious. The records in the various lake-cargo coal cases are full of both. Statutory regulations of mining methods, with a view of enforcing economy of coal in its mining probably would compel many shifts in the competitive fields, shut down certain mines at present prices of coal, and to others afford relief which this Commission has no power to give.

What the Pittsburgh operators are most vitally concerned with is the differential between the rate from their district and the rate from the districts in which their competitors operate. Their insistence upon a lower rate as such from Pittsburgh rests apparently upon the assumption that the rates from all other districts will remain unchanged and hence the differential in favor of the Pittsburgh district will be increased corresponding to the reduction in that rate.

The following table shows the relation of rates, in cents per net ton, from the Pittsburgh district and from the leading competitive fields in West Virginia:

Districts.	Rate in 1911.	Present rate.	Differential in favor of Pittsburgh 1911.	Differential in favor of Pittsburgh now.
Pittsburgh, Pa.....	88	78		
Fairmont, W. Va.....	96½	90	8½	12
Kanawha—Thacker, W. Va.....	97	97	9	19
Pocahontas—New River, W. Va.....	112	112	24	34

This table shows that the Pittsburgh operators are now more advantageously situated so far as the railroad rate is concerned than they were in 1911. The petitioners point out that this advantage is more than offset by the increase in wages of 5 cents per ton granted since this case was first tried, by the decrease of 10 cents per ton in the selling price of Pittsburgh coal at the head of the lakes, and by the before-mentioned increase of approximately 1 cent per ton in the net loading charge.

While the consuming public is vitally interested in the rates which are actually charged for the transportation of coal, the operators are interested primarily in the relation which exists among these rates because that relationship affects the competitive advantages and disadvantages of the respective operators. If we were to reduce the Pittsburgh rate, say, 10 cents more, what could prevent carriers serving competitive districts from making corresponding changes in their respective rates and thus offset the advantage which the



Pittsburgh operators had expected to gain through the additional reduction? In the argument upon the present petition the suggestion was made that if only the Commission would reduce the Pittsburgh-Ashtabula rate far enough a point would be reached where carriers serving competitive fields could no longer afford to carry lake-cargo coal at a rate which would enable operators on their respective lines to sell in competition with the Pittsburgh operators. This apparently implies that petitioners are not averse to action by this Commission which will assign to the Pittsburgh field a virtual monopoly of the lake-coal traffic.

It may be that the opening of the West Virginia mines was premature and an "economic blunder." It is not for this Commission to say which mines shall be worked and which shut down, who shall ship lake-cargo coal and who shall not. Yet that is exactly what we would do were we to confine our attention exclusively to the Pittsburgh-Ashtabula rate and establish that rate on the lowest basis possible on the assumption that the Pittsburgh district coal traffic is entitled to all the surplus available for reductions in rates of the defendant carriers without reference to all the other traffic so long as constitutional limitations are not transgressed with respect to their business as a whole. Furthermore, there is back of this line of reasoning an appeal ultimately to a rigid distance tariff. The immediate past has revealed tendencies to get away from the reckless disregard of distance. The future may compel greater recognition of distance in the making of many rates. The present business structure was not developed on that principle and if a change is to be introduced such a change perforce must be a gradual one.

While the fact has been established that the Pittsburgh operators have been enduring more or less hardship, it must not be forgotten that there are operators and miners in the West Virginia fields who have made their investments and who are working for a living and who are generally as human as those who are active in the Pittsburgh district. Furthermore, it is not for this Commission to say arbitrarily at what point carriers shall cease to participate in certain classes of traffic. It is a well-established and generally recognized rule that if additional business can be taken on at rates which will contribute at least a little in addition to the actual out-of-pocket expense, the carrier will be advantaged to that extent and all its patrons will be benefited to the extent to which such traffic contributes to the net revenue. It is obvious that without the amount of net contributed by this class of traffic, assuming a certain amount of revenue to be necessary, such revenue must be contributed entirely by the remaining traffic and the exclusion of this competitive traffic would increase the burden upon the other traffic to a corresponding extent.



As was suggested above, the question of differentials was not urged upon the hearing in this case, nor were all the carriers interested in these differentials made parties to the case. If all the carriers serving the competitive fields in West Virginia, Ohio, and Pennsylvania were before the Commission, it might be possible for us to establish proper differentials on the basis of full testimony. All these carriers, however, are not before the Commission; but even if they were, the Commission would still be powerless to prescribe a minimum rate, without which a fixed relation among these different fields hardly can be enforced. It is well known that Congress has not yet seen fit to grant this power to the Commission. Again, assuming that the Commission were to establish a maximum rate from Pittsburgh to Ashtabula Harbor of less than 78 cents, and that in addition we were to establish the differential between the Pittsburgh and all the other fields, this Pittsburgh rate would be virtually an absolute rate, and the establishment of rates from the other districts through the instrumentality of the differential likewise would be the establishment of a specific rate from those districts. Therefore the Commission, by indirection, would establish absolute rates from all these districts on lake-cargo coal. Efficiency and equity in regulation alike require it, nevertheless Congress has not yet granted such power.

Certain general features affecting this case are reflected in what we have recently said in *Asso. of Bituminous Coal Operators of Central Pa. v. P. R. R. Co.*, 23 I. C. C., 386. The following is an extract from that opinion:

It may well be that in times past rates from this and other fields have been adjusted with relation to the cost of mining coal and that the carriers undertook to make a rate upon which all producers would be brought into competition at common markets and rates so adjusted as to leave to the coal operator a reasonable profit upon his investment. Those rates would fluctuate not with respect to the cost of carriage nor to the value of the service as such, but solely with respect to the needs or advantages of the shippers. Upon the shipper favorably situated in location, and having a thick vein of coal at a slight depth and resulting cheap cost of operation, a higher rate would be imposed than upon his neighbor who might suffer under the disadvantage of a high wage scale and a thin vein. It has been repeatedly said by the Commission that it was not our function, nor that of the carrier, to equalize economic conditions. In this case it fairly appears that the profits made by the Clearfield operators upon tidewater coal are slight, and that if rates should be made so as to sustain an industry, which, because of intense competition within itself, or because of local disadvantages, yields but a slight profit, the present rate should be reduced. But we do not understand the law as permitting us to fix a reasonable rate solely upon this ground.

In view of the foregoing considerations the Commission does not deem it just and proper to modify its order. The application of petitioners will be denied.

No. 4505.

STATE OF IOWA ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted May 17, 1912. Decided June 3, 1912.*

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1. The export and domestic rates of  $22\frac{1}{2}$  and 25 cents per 100 pounds, respectively, on glucose from Chicago to New York found to be excessive and unduly discriminatory, and the defendants required to reduce the export rate to 18 cents and the domestic rate to 20 cents.
2. A manufactured product is not entitled as a matter of right to the rate on the raw material from which it is made.
3. Attention called to irregularities and the unlawful practices of certain manufacturers of glucose and sirup in the use of the milling-in-transit privileges.

*George Cosson*, attorney general, and *C. A. Robbins*, *J. H. Henderson*, and *Dwight N. Lewis* for complainants.

*H. A. Taylor* for Erie Railroad system and New York, Susquehanna & Western Railroad Company.

*Ernest S. Ballard* for New York Central lines.

*A. P. Burgwin* and *James Stillwell* for Pennsylvania Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Railroad Company; and affiliated lines.

*William C. Coleman* for Baltimore & Ohio Railroad Company and Baltimore & Ohio Southwestern Railroad Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

#### REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The domestic rate on glucose in carloads from Chicago to New York is 25 cents per 100 pounds, and it is complained of here as being unreasonably high. It is alleged also to be discriminatory and preferential. The same allegations are made in respect of the export rate of  $22\frac{1}{2}$  cents.

Glucose is one of the important products of corn. Its principal markets are east of the Mississippi River. The city of New York alone absorbs 80,000 barrels a year; that apparently is also approximately the annual consumption at Chicago. Large quantities are,

of course, used at other points. It is stated that 160,000 barrels move yearly through the port of New York for export to foreign countries. Among the by-products resulting from the manufacture of corn into starch and glucose are corn oil and meal, gluten feed, dextrine, dextrose, and corn oil vulcanized, or imitation rubber, all of which are in demand and are put to important uses in commerce. Starch, apparently the first product of this method of milling corn, when subjected to a certain chemical treatment is converted into glucose, a semifluid substance of extraordinary density that is used in various ways as a substitute for sugar. The importance of glucose as an article of commerce is indicated by the statement that about 15 per cent of the entire corn crop of the country is used in its production.

The Corn Products Refining Company, an enterprise of large capital, with factories at different points, is the largest producer of glucose in this country. It is referred to of record as the glucose trust. It has one plant just outside of New York City at a point in New Jersey called Edgewater. This mill has a capacity for grinding daily into glucose 12,000 bushels of corn. There are plants also in Illinois, at Argo, Pekin, Waukegan, and Granite City. There is also a mill at Davenport, Iowa. The combined capacity of these western factories in the production of glucose is about 85,000 bushels of corn a day, about half of which is the result of recent enlargements. One of the chief competitors of the Corn Products Refining Company is the Clinton Sugar Refining Company. This concern is an independent producer of glucose and its by-products, and has a mill at Clinton, Iowa, with a grinding capacity of from 12,000 to 14,000 bushels of corn a day. At Keokuk, in the same state, is the mill of Hubinger Brothers Company. This is also an independent concern. Formerly it manufactured starch only, but its plant was later equipped for the manufacture of glucose and its output of that commodity during the past five years has increased from 20 to 25 per cent. The complaint was filed on behalf of these two independent manufacturers.

Something is said of record of the unfair competition to which the glucose trust has subjected the independent refiners, but matters of this nature lie outside our authority and need not be detailed here. We are concerned only with the allegation that the domestic and export rates on glucose from Chicago to New York are excessive and are so adjusted as to give an undue advantage to the glucose trust and practically enable it to control its price in the general markets. As a result of the adjustment it is said that the glucose trade is in a demoralized and an exceedingly unsatisfactory condition.

The price of glucose in this country and, indeed, in foreign countries is fixed by the Corn Products Refining Company. The complainant mills assert that it is enabled to do this by reason of the



preferential rate adjustment and also because of the favorable location of its factories. That it does fix the price in the various markets of the world seems to be conceded. The price is based, as a well-informed witness explained, upon the price of corn at Chicago; that is to say, to the manufacturing cost is added the current price of corn at Chicago, together with the administrative expense and a profit. This fixes the Chicago price. To this is added the freight rate from Chicago in order to determine the price at a particular destination. The independent mills intimate that the Chicago price is often fixed at less than the aggregate of these factors in order to demoralize the trade elsewhere, and particularly to control the New York market. This however is denied, witnesses for the Corn Products Refining Company insisting that it could not afford, in order to give its Edgewater mill an advantage in New York City, to fix the Chicago price on a lower basis than is proper and thus impair its earnings on the large traffic from its western mills to other points and for export.

Edgewater is on the harbor of New York and takes the New York rate on traffic from Chicago. Corn therefore moves from Chicago to the Edgewater mill under the reshipping rate of 16 cents per 100 pounds applicable on all coarse grains; and the Edgewater mill is able to lay its glucose down in New York City at practically the corn rate, so far as freight charges are concerned. This advantage of nearly 9 cents per 100 pounds is necessarily a substantial one. Its control of the New England markets is perhaps not so obvious, but it nevertheless seems to have an advantage there. On the hypothesis that the glucose, gluten feed, and other products of a carload of 56,000 pounds of corn from Chicago, when milled at Edgewater, will all be disposed of at the same point in New England, it is said that the freight charges are not lower than would be the freight charges on all these products of a carload of corn of the same weight when milled at Clinton and shipped to the same destination. The by-products however do not always go to the same destination. If we consider the glucose alone, the complainant mills are clearly at a disadvantage in New England territory. They pay the corn rate into Chicago and the glucose rate from Chicago to the New England point. The Edgewater mill, on the other hand, pays the corn rate all the way to Edgewater and the glucose rate beyond. Its transportation charges on glucose to New England points are therefore substantially less than those of the independent mills at Keokuk and Clinton. These rate advantages undoubtedly give the Edgewater mill a more or less commanding position in the eastern markets.

On the part of the complainant mills it is contended that the logical location for a factory is at or as near as possible to the

source of the supply of the raw material, and that any rate that permits a mill at a distant point to manufacture at practically the same cost as the mill located near the source of supply is unduly preferential. On this general theory it is insisted that the independent mills in the corn belt ought to have rates that will enable them to compete in the city of New York on an equality with the mill at Edgewater. In other words, what is really demanded is a rate on glucose that does not exceed the rate on the corn from which it is made. There is however no such fixed rule in the law of rates, and the cases cited do not support the contention. In *Bulte Milling Co. v. C. & A. R. R. Co.*, 15 I. C. C., 351, we pointed out that a higher rate on flour than on wheat would necessarily tend to concentrate the flour mills toward the Atlantic seaboard, and that a lower rate on flour than on wheat would tend to centralize the milling industry nearer to the wheat fields; while a parity of rates on wheat and flour would make it possible, under a milling-in-transit tariff, for a mill to subsist at any point between the Missouri River and the seaboard. But we went no further than to say that a parity of rates on the two commodities seemed on many grounds to be a sound policy as applied to that particular territory. In *Howard Mills Co. v. M. P. Ry. Co.*, 12 I. C. C., 258, we affirmatively said that "there is no inflexible requirement that rates upon grain and the products of grain shall be the same." Moreover we there fixed a rate on flour moving westward that was 7 cents higher than the rate on wheat between the same points. It is true that in some cases we have given to the product the rate fixed by the carriers on the raw material from which it is made; and in some cases we have fixed a relation by approximating the rate on the product to the rate on the raw material. But in all such cases the rate actually fixed by the Commission on the particular commodity was the rate deemed by the Commission, under all the circumstances surrounding the traffic, to be the reasonable rate. And that is the extent of our authority under the law when dealing with a rate on the basis of its reasonableness. There is no rule that the manufactured product is entitled as a matter of right to the rate on the raw material from which it is made; and confusion would necessarily result from the rigid application of any such principle.

In case a parity of rates on glucose and corn is not ordered by the Commission the complainant mills contend that glucose should take a rate not more than 10 per cent higher than the corn rate. The defendant carriers, on the other hand, insist that there is no analogy between corn and glucose or any ground upon which the glucose rate should be fixed in relation to the rate on corn, and that it ought to be fixed with reference to rates on other commodities of a generally



similar nature and with which it comes into direct competition, such as sirup and molasses.

In the course of the testimony these facts appeared: Glucose is ordinarily shipped in tight barrels, but not infrequently moves in tank cars. When shipped in barrels the average carload weight is about 45,000 pounds; in tank cars it is 80,000 pounds. The average loading of corn for an observed period was 70,000 pounds. Any box car may be used for glucose in barrels, and claims for loss and damage are few in number and small in amount; on the other hand, claims on all grain shipments are substantial in number and amount, and to avoid leakage cars in good condition must be used. At a recent date glucose was worth \$2.05 per 100 pounds in Chicago; at the same time corn was worth \$1.17. It also appeared that corn moves in greater volume than glucose and that the competition for the traffic is more aggressive; that glucose is produced at a few points only and moves to the east chiefly through Chicago or Chicago junctions, while there are numerous routes over which corn moves from Chicago to New York, and the corn rates from Chicago to New York are competitive with corn rates to Montreal on the north and to Galveston on the south.

The record also discloses that with the exception of a period of about four months in 1901, when the rate on glucose in barrels in carloads from Chicago to New York was 17.5 cents, and a later period during which it was 22.5 cents, the present rate of 25 cents has been maintained since January 1, 1900, and perhaps longer. It seems that there was also a period of four months in 1907 during which a 30-cent rate was in effect. The same rates have applied on glucose in tank cars except during the period from December 1, 1903, to November 30, 1906, when the rate was 20 cents, 17.5 cents, and 15 cents. During these 12 years the rate on corn from Chicago to New York has ranged from 15 to 22 cents per 100 pounds. That has also been the range of rates on starch and gluten feed, and also on other by-products of corn. The present rate on starch is 17.5 cents per 100 pounds. The value of starch at Chicago on the date of the argument was said to be \$2.58 per 100 pounds, and on the same date the price of glucose in bulk was \$2.08, and in barrels \$2.30 per 100 pounds.

A further fact upon which some stress was laid on the argument is that glucose milled in transit at the complainant mills takes the corn rate into Chicago. As heretofore stated, Edgewater takes the New York City rate of 16 cents per 100 pounds on corn. When converted by the Edgewater mill into glucose the lighterage charge of 3 cents for moving the glucose across the harbor to New York City is not exacted; it pays only a special charge for the transit privilege of one-half cent per 100 pounds.



All this, as well as all other matters appearing of record, have had careful consideration, and the conclusion at which we have arrived is that the present rate of 25 cents per 100 pounds on glucose from Chicago to New York is unreasonably high and that no rate in excess of 20 cents per 100 pounds should be exacted on this traffic. The export rate in our judgment should not exceed 18 cents per 100 pounds.

During the course of the hearing it developed that at the Davenport mill of the Corn Products Refining Company there is manufactured what is sold in the market as corn sirup for table use. This is a mixture of glucose and refiner's sirup. Moving to Chicago, this sirup takes the balance of the corn rate. In other words, corn moves into the mill and is made into glucose; the glucose is then mixed with a substantial percentage of refiner's sirup, a nontransit product, and the whole is then inclosed in tin cans, which in turn are crated; in that form the so-called corn sirup for table use reaches Chicago under a rate for corn. The question is not directly involved in this proceeding, but we deem it proper to say that this practice is an extreme application of the transit privilege, and is of doubtful validity. We are by no means convinced on the information now at hand that this corn sirup for table use may properly be regarded as a product of corn for rate-making purposes. A similar practice exists at Keokuk, at the mill of Hubinger Brothers Company, one of the complainants herein.

An order will be entered in accordance with these conclusions.

24 I. C. C.

No. 3592.

MARIAN COAL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY.

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*Submitted May 16, 1912. Decided June 8, 1912.*

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Upon complaint attacking defendant's rates on anthracite coal from the Lackawanna (Wyoming) coal region of Pennsylvania to tidewater, *Held:*

1. That the rates of defendant per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), of \$1.58 on prepared sizes, \$1.43 on pea, and \$1.28 on buckwheat, are excessive and unreasonable in and to the extent that they exceed \$1.33 on prepared sizes, \$1.24 on pea, and \$1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement.
2. That the complainant is entitled to reparation upon basis of the rates herein found reasonable as applied to such of the shipments embraced in its claim as were delivered within the statutory period of two years prior to the date of filing complaint. No conclusion as to the amount of the award will be given at this time and this question will be held in abeyance for determination in a supplemental report.

*H. C. Reynolds* for complainant.

*W. S. Jenney* and *J. L. Seager* for defendant.

REPORT OF THE COMMISSION.

MEYER, *Commissioner:*

The complaint in this proceeding, filed on October 18, 1910, puts in issue the reasonableness of defendant's rates, local and proportional, on anthracite coal from Taylor, Pa., to all points on that line, and specifically seeks the establishment by the Commission of rates from the Lackawanna (Wyoming) coal region of Pennsylvania to Hoboken, N. J., f. o. b. vessel there, of not more than 95 cents per gross ton on sizes larger than pea, 90 cents on sizes known as pea and buckwheat, and 75 cents on sizes known as rice and barley. Reparation in the sum of \$55,238.27 is asked for the imposition of alleged excessive rates on numerous carload shipments.

On March 13, 1911, the complainant filed another petition, No. 3931, in which it asks that the Commission require the defendant

herein and other carriers to establish through routes and joint rates from Taylor to specified points without the state of Pennsylvania. This complaint and No. 3592 were heard together; but before the hearing had been concluded it was announced that certain of the defendants would establish through routes and joint rates in connection with the Delaware, Lackawanna & Western Railroad. This intention led to an agreement with the complainant to discontinue further proceedings in No. 3931 unless the routes and rates were not made effective as proposed. It appears that only two of the defendants, the Central Railroad of New Jersey and the Pennsylvania Railroad have published joint rates to points on their lines. Under the circumstances we can not in justice to the complainant dismiss this case. If an adjustment of the matter, as outlined at the hearing, is not made by all the defendants, as it has been made by the above-named two, the proceeding will be resumed with the view of making an appropriate order. The reasonableness *per se* of the rates established or proposed is not in issue and the agreement in question does not prejudice the right of the complainant to test the reasonableness of such rates by the filing of a new petition.

The petitioner is a corporation engaged in the business of cleaning, preparing, shipping, and selling that character of anthracite coal known in the trade as "washery" coal, reclaiming from the refuse discarded in the early history of anthracite mining the small pieces which at such early period were not marketable, but which are now valuable, especially for steaming purposes, owing to improved methods of preparation and draft grates. The washery of complainant at which such refuse is prepared for the market is located in the borough of Taylor, Lackawanna county, Pa., about 2,500 feet from the Bloomsburg division of defendant's line. It is served by a spur track connecting with such division near Taylor, a point about 3 miles west of Scranton. The Bloomsburg division is that part of defendant's road upon which originates the bulk of its anthracite tonnage, being located in what is known as the "Northern" anthracite region, and runs in a northeasterly direction from Northumberland to Scranton, a distance of about 80 miles. The main line of defendant runs in a southeasterly direction from Buffalo, N. Y., through Scranton to tidewater at Hoboken, N. J., a distance of 411 miles.

The present rates per gross ton from Taylor, Pa., to tidewater (f. o. b. vessels, Hoboken, N. J.), which complainant specifically seeks to have reduced to the basis before noted, are as follows: Prepared (larger than pea), \$1.58; pea, \$1.43; buckwheat, \$1.28; rice and smaller, \$1.13. The distance from Taylor to Hoboken is 147.8 miles, and these rates per ton-mile are 10.6, 9.6, 8.6, and 7.6 mills, respectively, or an average revenue on the four rates of 9.1 mills. On



basis of the rates sought by complainant the ton-mile revenues would approximate 6.4 mills on prepared, 6 mills on pea and buckwheat, and 5 mills on rice and barley.

These proportional rates are also applicable to the transportation of anthracite coal to tidewater from all the collieries and washeries reached by defendant's line and have been in effect since June 1, 1903. It is urged by complainant that the average distance from these various points to tidewater is 148 miles, but the defendant claims an average of 155 miles, stating that its auditing department figures the average haul as being in excess of 10 miles above the distance from Scranton to tidewater. Accepting the figure advanced by defendant, the ton-mile earnings on these rates will approximate 10.2, 9.2, 8.2, and 7.2 mills respectively, or an average of 8.7 mills. It will be noted that this line haul of 155 miles is not reckoned via the new "cut-off" line, Delaware Water Gap to Netcong. The completion of this cut-off in December, 1911, reduced the distance 12 miles, or from 155 to 143 miles.

In substantiation of the charge that these rates are excessive, the complainant makes numerous comparisons with rates between other points on selected commodities including anthracite and bituminous coal, sand, etc. These comparisons reveal lower ton-mile earnings than under the rates of defendant, and the complainant asserted that this showing condemns such rates. Comparisons of ton-mile revenues are frequently resorted to by the Commission, and several such comparisons are made in this report. Their limitations have repeatedly been pointed out by us in previous cases.

The defendant in denying the allegations of the petition, attempts to justify its rates on the ground of the expensive character of the service performed, particularly the terminal expenses. The testimony shows that empty cars come into the anthracite region and are distributed from the yards to the collieries and washeries. These cars are switched and classified on mine spurs. After they are loaded they are assembled at various points and are then forwarded to the so-called classification yards. The assembling point from the Marian washery appears to be the Taylor yards, and the classification point the Hampton yards. The classification performed at these yards appears to be simply the separation of the tonnage moving north toward Buffalo and that moving south to tide, except as to the Buffalo and intermediate points traffic there is a further classification into two sizes of coal, and likewise to local points south of Scranton moving short distances. On the great bulk of the anthracite tonnage, which appears normally to be in the direction of tidewater, the only classification into sizes takes place at Secaucus, N. J., a point on the New Jersey meadows a few miles outside of Hoboken. From that

point it is moved to Hoboken for local delivery, or delivered on board ships.

It is claimed that coal, unlike other commodities, is a nonproducing commodity, affording no tonnage other than such as may be supplied by the use of steam generated from it; that on account of the peculiar condition of the trade, cars are often supplied in excess of the actual demand, and are held free from demurrage while awaiting loading; reconsignment is permitted without charge; stoppage in transit for storage for an unlimited period is granted free of charge; 97 per cent of the cars are hauled back to the mines empty, and, in general, that the handling of this commodity is different and more expensive than that of other traffic.

While the record supports some of the contentions of defendant, it is not shown that it costs more to handle the coal traffic than other freight. The complainant, to sustain its demand for lower rates, points to the fact that the ton-mile earnings on defendant's coal traffic have been very high. Following is a statement of the ton-mile earnings on all traffic (revenue-earning freight), anthracite traffic, and for all other than anthracite traffic (revenue-earning freight) for the years 1909 to 1911, inclusive, compiled from the annual reports of the defendant to the Commission.

*Statement compiled from the annual reports filed with the Interstate Commerce Commission in behalf of the Delaware, Lackawanna & Western Railroad Co. for the years ending June 30, 1909, to June 30, 1911.*

#### ALL REVENUE-EARNING FREIGHT TRAFFIC.

Item.	1909	1910	1911
Total tonnage.....	19,053,696	21,603,849	21,563,915
Total revenue.....	\$24,832,586.66	\$26,789,316.44	\$26,067,755.87
Ton-mileage.....	3,363,062,727	3,675,364,577	3,642,161,113
Ton-per-mile revenue.....mills..	7.38	7.29	7.16

#### ANTHRACITE COAL.

Total tonnage.....gross tons..	10,033,827	10,298,870	9,644,864
Revenue.....	\$14,500,031	\$14,544,751	\$13,637,892
Ton-mileage.....	1,870,431,785	1,929,304,534	1,828,065,293
Ton-per-mile revenue:			
Mills per ton of 2,240 pounds.....	7.75	7.54	7.46
Mills per ton of 2,000 pounds.....	6.92	6.73	6.66

#### ALL REVENUE-EARNING FREIGHT TRAFFIC OTHER THAN ANTHRACITE COAL.

Total tonnage.....	9,019,869	11,304,979	11,919,051
Revenue.....	\$10,332,555.66	\$12,244,565.44	\$12,429,863.87
Ton-mileage.....	1,493,630,942	1,746,060,043	1,814,095,820
Ton-per-mile revenue.....mills..	6.91	7.01	6.85

That the traffic handled by the defendant has been very remunerative is revealed by the following financial statement and condensed balance sheet compiled from the annual reports of that carrier to the Commission for the last four years:

*The Delaware, Lackawanna & Western Railroad Co. financial statement for years 1908-1911.*

[Compiled from annual reports to the Interstate Commerce Commission.]

	1911	1910	1909	1908
INCOME ACCOUNT.				
Operating revenues.....	\$35,947,066	\$36,005,987	\$33,553,436	\$33,810,254
Operating expenses.....	21,627,942	19,292,769	18,477,713	19,622,043
Net operating revenue.....	14,319,124	16,713,218	15,075,723	14,188,211
Net revenue from outside operations.....	295,524	280,673	304,036	245,165
Total net revenue.....	14,614,648	16,993,891	15,379,758	14,433,376
Taxes accrued.....	1,640,664	1,516,000	1,094,400	1,290,300
Operating income.....	12,973,984	15,477,891	14,285,358	13,143,076
Other income.....	1,039,552	1,048,960	1,422,827	1,382,884
Gross corporate income.....	14,013,536	16,526,851	15,708,185	14,525,960
Rents and miscellaneous deductions.....	5,476,000	5,531,728	5,500,646	5,500,860
Interest on funded debt.....	6,486	6,486		35,531
Dividends from income <sup>1</sup> .....	6,028,800	6,028,786	5,240,000	5,240,000
Appropriations for betterments.....	2,554,375	2,471,020	1,676,375	3,540,120
Balance to profit and loss.....	<sup>1</sup> 52,125	<sup>2</sup> 2,488,831	<sup>2</sup> 3,291,164	<sup>2</sup> 209,449
PROFIT AND LOSS.				
Balance at beginning of year.....	32,072,279	39,819,591	31,922,627	28,274,900
Other properties—profit.....	3,228,958	4,079,377	4,634,635	3,614,063
Dividends from surplus <sup>2</sup> .....		17,030,000		
Credit balance to balance sheet after other adjustments are made.....	35,362,685	32,072,279	39,819,591	31,922,627
BALANCE SHEET.				
Assets:				
Road and equipment, less reserves for accrued depreciation.....	42,301,394	38,848,710	}	Balance sheet form not comparable with 1910 and 1911.
Securities.....	17,323,041	13,666,707		
Other investments.....	2,957,897	2,817,459		
Working assets.....	19,356,547	19,846,994		
Deferred debt items.....	5,241,117	6,319,261		
Total.....	87,179,996	81,499,131		
Liabilities:				
Stock.....	30,347,720	30,347,720	}	
Mortgage bonds.....	320,000	320,000		
Working liabilities.....	6,567,776	6,941,021		
Accrued liabilities not due.....	3,047,304	2,707,343		
Deferred credit items.....	179,023	309,656		
Appropriated surplus.....	11,355,488	8,801,112		
Balance.....	35,362,685	32,072,279		
Total.....	87,179,996	81,499,131		

<sup>1</sup> Debit.

<sup>2</sup> Credit.

<sup>3</sup> Rate of dividends from both income and surplus, 1911, 20 per cent; 1910, 85 per cent; 1909, 20 per cent; 1908, 20 per cent.

NOTE.—The capitalization covers both railroad and coal properties. "In former reports an assignment of \$10,000,000 was made to other properties, purporting to represent the capital cost of coal properties, etc. The division was purely arbitrary and had no basis. The two interests are inseparable and we do not care to guess how much is applicable to either." (Annual Report, 1908, p. 28.)

This financial statement shows a high degree of prosperity. With practically no bonded indebtedness, the dividends actually paid in four years are nearly one and a half times the par value of the stock. At the same time there have been expended, since June 30, 1907, out of income for improvements over eleven million dollars, leaving



surplus in 1911 of over thirty-five million dollars. It is true that these returns in part come out of the profits of coal mining, but the capitalization covers both the railroad and coal properties. It should be noted, however, that the capitalization of the Delaware, Lackawanna & Western per mile of all tracks is low as compared with roads in this territory including the other anthracite roads.

In the case of *Meeker & Co. v. L. V. R. R. Co.*, 21 I. C. C., 129, the Commission reached the conclusion that the rates for the transportation of coal from the Wyoming region of Pennsylvania to Perth Amboy, N. J. (tidewater), of \$1.55 per ton on prepared sizes, \$1.40 on pea, and \$1.20 on buckwheat, were unreasonable so far as they exceeded \$1.40 on prepared sizes, \$1.30 on pea, and \$1.15 on buckwheat. These reductions of 15, 10, and 5 cents, respectively, were on rates which applied for an average distance of 165 miles. The maximum rates established by the Commission afford the carrier ton-mile earnings of 8.48, 7.87, and 6.96 mills, respectively. Upon this basis the rates to tidewater of the defendant herein would be approximately \$1.31 on prepared sizes, \$1.22 on pea, and \$1.08 on buckwheat.

Following is a comparison for the past 10 years of the anthracite coal rates per gross ton maintained by the Lackawanna and Lehigh Valley railroads and the Central Railroad of New Jersey from the Wyoming region of Pennsylvania to tidewater:

From—	To—	Period.	Prepared sizes.	Pea.	Buckwheat and culm.
Mines on Central R. R. of New Jersey.	{ Elizabethport, N. J., and Port Johnston, N. J.	Jan. 1, 1902, to Jan. 15, 1905, inclusive.	\$1.55	\$1.40	\$1.20
		Jan. 16, 1905, to date.	1.55	1.40	1.20
		Jan. 1, 1902, to Nov. 15, 1903, inclusive.	1.55	1.40	1.25
Mines on Lehigh Valley R. R. (Lehigh, Schuylkill, and Wyoming regions).	{ Perth Amboy, N. J., f. o. b. vessels.	Nov. 16, 1903, to Jan. 9, 1905, inclusive.	1.55	1.40	1.25
		Jan. 10, 1905, to Oct. 14, 1911, inclusive.	1.55	1.40	1.20
		Oct. 15, 1911, to date.	1.55	1.40	1.20
Lehigh and Schuylkill regions.	do.	do.	1.40	1.30	1.15
Wyoming region.	do.	do.	1.58	1.43	1.28
Mines on Delaware, Lackawanna & Western R. R.	{ Hoboken, N. J., f. o. b. vessels.	June 1, 1903, to Feb. 25, 1912, inclusive.	1.58	1.43	1.28
		Feb. 26, 1912, to date.	1.58	1.43	1.28

It will be seen from this table that the tidewater rates on prepared sizes, pea, and buckwheat over these lines have remained unchanged for 10 years past except over the Lehigh Valley, which reduced its rate on buckwheat 5 cents per ton on January 10, 1905, and on October 15, 1911, established the lower rates on the three sizes in

accordance with the Commission's order in the *Meeker case, supra*. In this connection it is worthy of note that this carrier confined the latter reduction to the rates from the Wyoming region alone, although it had always, prior to that time, maintained the same rates from the Lehigh, Schuylkill, and Wyoming regions.

The defendant and the Lehigh Valley Railroad also transport anthracite coal from the Wyoming region to the Lake Erie port of Buffalo for shipment beyond. A comparison of the present rates per gross ton for this movement is as follows:

	Prepared sizes.	Pea.	Buck-wheat.	Rice and barley.
Mines on Delaware, Lackawanna & Western R. R. to Buffalo, N. Y. ....	\$2.00	\$1.75	\$1.75	\$1.75
Mines on Lehigh Valley R. R. to Buffalo, N. Y., f. o. b. vessel. .	2.25	2.00	2.00	2.00
Mines on Lehigh Valley R. R. to Buffalo, N. Y., for reshipment via rail. ....	2.00	1.75	1.75	1.75

The distance to Buffalo via the line of the defendant from Wyoming, Pa., which may be taken as a representative point of origin, is 277.6 miles, and the rate per ton per mile on prepared sizes is 7.2 mills, or 3.4 mills less than the rate under attack, from Taylor, Pa., to tidewater, a distance of 147.8 miles. Via the Lehigh Valley from Wyoming, Pa., to Buffalo the distance is 273 miles, and the rate per ton per mile on prepared sizes, for reshipment by rail, is 7.3 mills, and f. o. b. vessel 8.2 mills. The Lehigh Valley rate on prepared sizes from the Wyoming region to tidewater, a distance of 165 miles, was, until reduced by the Commission, 9.4 mills. This table shows that on coal to the lakes no difference is made in the rates on pea, buck-wheat, rice, and barley.

A study of the anthracite coal movement of the principal coal-carrying roads shows that the bulk of the tidewater coal goes to the New York terminals, and that this tonnage is greatly in excess of the aggregate tonnage to all Lake Erie and Lake Ontario ports, including Buffalo, for domestic as well as Canadian destinations. The following is a statement of the total anthracite movement of eight originating carriers for the last two calendar years:

*Anthracite coal movement.*

Shipments by railroads, via—	1910	1911
	<i>Long tons.</i>	<i>Long tons.</i>
Philadelphia & Reading. ....	12,445,733	13,265,758
Lehigh Valley. ....	11,195,765	12,603,000
Central Railroad of New Jersey. ....	8,519,135	9,218,802
Delaware, Lackawanna & Western. ....	9,589,076	9,869,620
Delaware & Hudson. ....	6,578,356	7,206,731
Pennsylvania. ....	6,250,976	6,494,733
Erie. ....	7,554,198	8,800,179
New York, Ontario & Western. ....	2,772,547	2,495,476
Total. ....	64,905,786	69,954,299

The tidewater coal handled at the principal ports was as follows:

*Tidewater coal handled.*

To—	1910	1911
<b>DOMESTIC SHIPMENTS.</b>		
New York.....	<i>Long tons.</i> 13,991,426	<i>Long tons.</i> 14,651,401
Philadelphia.....	1,980,830	2,197,750
Baltimore.....	271,122	257,025
Total domestic shipments.....	16,243,378	17,106,176
<b>EXPORTS.</b>		
Baltimore.....	3,248	4,525
New York.....	65,807	87,747
Newark, N. J.....	23,385	36,064
Perth Amboy, N. J.....	42,591	33,547
Philadelphia.....	74,733	52,984
Total exports.....	209,764	214,867
Total shipments.....	16,453,142	17,321,043

These figures show the quantities of anthracite coal handled over tidewater docks at New York, Philadelphia, and Baltimore; also exports from these three ports as well as from Newark and Perth Amboy, N. J. Some of these exports, especially at New York, may be contained in the totals of tidewater coal reported by the carriers, but as the exports are relatively small the error resulting from either adding or disregarding the export figures would not be very serious.

The lake shipments of anthracite coal during the same calendar years were as follows:

*Lake shipments of anthracite coal.*

	1910	1911
<b>TO DOMESTIC DESTINATIONS.</b>		
From Lake Erie ports.....	<i>Short tons</i> 3,927,106	<i>Short tons.</i> 4,074,383
From Lake Ontario ports.....	226,366	254,419
Total domestic.....	4,153,472	4,328,802
Equivalent in long tons.....	3,708,904	3,865,002
<b>EXPORTS BY LAKE.</b>		
From Buffalo customs district.....	<i>Long tons.</i> 320,677	<i>Long tons.</i> 462,588
From Oswego <sup>1</sup> customs district.....	456,627	778,437
Total, long tons.....	4,486,208	5,106,027

<sup>1</sup> Figures represent probably exports by lake as well as rail; exports by lake only are not given. The customs district of Oswego includes Sodus Point and Fair Haven.

The foregoing tables have been compiled from data in the possession of the Commission.

No definite calculation of initial and terminal expenses was submitted by defendant, although it endeavored to show that they are "extremely expensive." It is clear, however, that any possible allowance on account of such extra cost would not bring the total



operating expenses to a point where rates of \$1.33 on prepared sizes, \$1.24 on pea, and \$1.09 on buckwheat would not be highly remunerative for the average haul of 155 miles from the mines to tidewater. These rates are based on a consideration of the ton-mile rates established by the Commission in the *Meeker case, supra*, making due allowance for the fact that for a shorter distance the ton-mile rate should be slightly higher.

Considering all the facts of record, we are of the opinion that the defendant's rates per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage Station, N. J. (f. o. b. vessel), of \$1.58 on prepared sizes, \$1.43 on pea, and \$1.28 on buckwheat are excessive and unreasonable in and to the extent that they exceed \$1.33 on prepared sizes, \$1.24 on pea, and \$1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement.

We are further of the opinion that the complainant is entitled to reparation upon basis of the rates herein found reasonable as applied to such of the shipments embraced in its claim as were delivered within the statutory period of two years prior to the date of filing complaint. No conclusion as to the amount of the award will be given at this time and this question will be held in abeyance for determination in a supplemental report.

The complaint contains numerous allegations not connected with the rate. All of them relate to the manner of conduct of the carrier's business in certain respects. The Commission is charged with the duty of keeping itself informed with respect to the manner in which this business is conducted; and therefore this report might well devote attention to such matters. However, the petitioner is primarily interested in the rates in question and we are disposing of that feature of its complaint at this time to avoid the delay which a fair consideration of the collateral issues might necessitate. The extent to which, if any, such collateral issues will be dealt with in a formal report is a matter for future determination.

An order will be issued in accordance with the conclusions herein expressed.

24 I. C. C.

No. 4185.

CRESCENT COAL & MINING COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY  
ET AL.

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*Submitted January 22, 1912. Decided June 8, 1912.*

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Upon shipments of coal billed from points in Indiana to Nassau, Ill., defendants collected the local rate from said points to Depue; *Held*, That Nassau is a point beyond Depue and that defendants should have applied the proportional rate to Depue for beyond, as the latter rate was the duly established and lawfully effective rate applicable to the shipments of complainant under section 6 of the act. Reparation awarded.

*M. F. Gallagher* for complainant.

*W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

*E. H. Seneff* for Chicago & Eastern Illinois Railroad Company.

*Wm. B. McIlwaine* for Depue & Northern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the coal business at Chicago, Ill. By petition, filed June 19, 1911, it alleges, in substance, that during the year 1910 it shipped approximately 20,000 tons of coal over the lines of the defendants from Brazil and other points in Indiana to Nassau, Ill., for the transportation of which the defendants collected unreasonable charges. Reparation is asked in the sum of \$11,887.59. The controversy arises chiefly from the fact that defendants exacted for the transportation of this coal their local rate to Depue, Ill., whereas complainant alleges that under their tariffs they should have charged their proportional rate to Depue, which complainant asserts was applicable on shipments destined to Nassau. Complainant also alleges that the local rate was unreasonable in and of itself.

The Mineral Point Zinc Company operates plants at some twelve points in the middle west, one of said plants being at Nassau, Ill.,

and has offices in Chicago. In the course of business complainant opened negotiations with the Mineral Point Zinc Company with a view to selling said company a considerable quantity of coal for use at its Nassau plant. Depue and Nassau are in the coal-producing districts of Illinois, but owing to the fact that there was a strike at the Illinois mines it was necessary for the zinc company to obtain coal from points beyond its usual source of supply. Prior to naming a price to the zinc company complainant attempted to ascertain the cost of transporting coal from several different points of origin. Complainant's testimony is to the effect that early in June, 1910, one of its salesmen called upon the purchasing agent of the zinc company at Chicago regarding the sale of the coal. Points of delivery and freight rates were discussed, and the purchasing agent informed the salesman that there were low rates from Indiana points to Depue and Howe, Ill., on coal routed in care of Depue & Northern Railroad. The salesman then telephoned to the office of the assistant general freight agent of the Chicago & Eastern Illinois Railroad Company in Chicago and sought definite information as to the rates to Depue and to Howe, and was referred to that carrier's tariff, I. C. C. No. 2475. The salesman examined the tariff and found that from certain Indiana mines there were two rates to Depue, one a joint rate of \$1.30 per net ton to Depue proper, the other a proportional rate of 75 cents upon coal destined to points beyond Depue to which no through rates were in effect via Depue. The salesman then ascertained from the office of the New York Central lines that there was a rate on coal from the Terre Haute district in Indiana to Howe, Ill., another station on the Depue & Northern Railroad, of 80 cents per ton. After noting these rates he again telephoned to the Chicago & Eastern Illinois office and was informed that the rate of 75 cents was a rate that applied to Depue on coal destined to points beyond, and that at Depue the Chicago, Milwaukee & St. Paul Railway Company, Chicago, Indiana & Southern Railroad Company, Depue & Northern Railroad Company, and an interurban electric road interchanged traffic with the Chicago, Rock Island & Pacific. He then asked if the 75-cent proportional rate applied on shipments destined to Nassau and was informed that it applied to all points on the Depue & Northern Railroad. The salesman then called up the rate clerk of the Chicago, Rock Island & Pacific Railway and the information received from the Chicago & Eastern Illinois office was confirmed by the former carrier. The salesman then advised the zinc company's purchasing agent of the information he had received from the tariffs and the carriers' employees, and the purchasing agent asked him to name a price on coal to be shipped to Nassau, Ill., delivered on the Depue & North-



ern rails at either Depue or Howe, Ill., saying Nassau was a point on the Depue & Northern Railroad beyond Depue and that the zinc company would pay the charges beyond Depue. Acting upon the information in his possession the salesman named a price upon the coal f. o. b. Depue, which was based upon the mine price in Indiana, plus the proportional rate to Depue and a margin of about 5 cents a ton profit.

The offer so made was accepted by the zinc company, and complainant proceeded to fill its orders thereunder. The shipping instructions, as evidenced by waybills filed in the record, show that the coal was consigned to Depue, Ill., care of the Depue & Northern Railroad for delivery to the Mineral Point Zinc Company, Nassau, Ill., at the proportional rate of 75 cents. When the coal reached Depue the local agent of the Rock Island at that point erased from the billing the 75-cent rate and charges based thereon, inserted the local rate of \$1.30 per ton, and demanded charges accordingly. The Mineral Point Zinc Company, on being notified by the Depue agent of the arrival of the coal in Depue, accepted the coal, and the agent collected charges from the zinc company at the local rate of \$1.30. Complainant had made its price to the zinc company include delivery at Depue, and in settlement of accounts the zinc company deducted from complainant's invoice price freight charges at the rate of \$1.30 per ton. Complainant alleges that upon basis of the application of the local rate to Depue it has lost about \$12,000 in the transaction.

Most of the testimony is devoted to the question whether or not the proportional rate was lawfully applicable to shipments from Indiana mines billed to Nassau, Ill. The defendants assert that they have been unable to find in their offices anyone who gave complainant the information above outlined respecting the rates in question and are therefore inclined to doubt that any such information was given. The purchasing agent who concluded the contract with complainant has denied in several important particulars the testimony respecting the negotiations leading up to the contract for the coal, and particularly that he made any statements respecting the rates applicable or gave instructions to ship the coal to Nassau. In this connection it is noted that complainant has sued the Mineral Point Zinc Company for damages in connection with this transaction. However, the question as to whether the proportional rate of 75 cents was lawfully applicable to these shipments is not to be determined by reference to information which may have been given to complainant by defendants' rate clerks or by the representative of the zinc company, and it must be understood that such testimony is disregarded so far as conclusions in this case are concerned.

The proportional rate on coal from the Indiana mines to Depue is published as follows in Chicago & Eastern Illinois tariff, I. C. C. No. 2475, at page 162:

*Rates in dollars and cents per ton of 2,000 pounds.*

Index No.	To—	From stations on C. & E. I. R. R., E. & T. H. R. R., and E. & I. R. R., as indicated by groupings shown on page 4.					
		A. Brazil.	B. Danville.	C. Marion.	D. Pana.	E. Sullivan.	F. Princeton.
7311	Chicago, Rock Island & Pacific Ry. (File B-809): Depue, Ill. <sup>1</sup> .....	\$0.75	\$0.75	\$0.98	\$0.75	\$0.80	\$0.87

<sup>1</sup> Applies on shipments destined to points beyond to which no through rates are in effect via Depue, Ill.

The coal here involved was billed and routed from stations on the Chicago & Eastern Illinois Railroad to the Mineral Point Zinc Company, Nassau, Ill., via the Chicago & Eastern Illinois to Burr Oak, Ill., thence via the Chicago, Rock Island & Pacific Railway to Depue, Ill., in care of the Depue & Northern Railroad at Depue. It was the complainant's understanding that the coal would be thence transported to Nassau, Ill., a point on the Depue & Northern Railroad beyond Depue, and that the zinc company would pay the cost of such transportation beyond Depue. The initial carrier way-billed the shipments as directed by complainant and applied thereto the proportional rate of 75 cents. As stated above, when the coal arrived at Depue the charges were advanced to the basis of the local rates to that point by the agent of the Chicago, Rock Island & Pacific Railway Company. The reason assigned by said agent for correcting the rate and collecting the additional charge was that the ultimate destination of the shipments was within the corporate limits of Depue and the coal was therefore subject to the local rate. Complainant received no notice of the application of the higher rate until delivery of the entire consignment had been effected, about three months after the first shipment was made. The defendants contend that such shipments were to all intents and purposes shipments to Depue proper and that it would have been unlawful to apply the proportional rate. It is urged by complainant that Nassau is a station beyond Depue to which the coal was consigned and delivered, and that therefore the proportional rate was applicable to these shipments. On behalf of defendants it was claimed that there is no such station as Nassau and that it has no existence for any of the purposes of railroad operation.

It appears from the evidence that the zinc company's plant is located at Depue, Ill., within a few hundred feet of the Rock Island



depot. It is known as the Nassau plant on account of a particular sort of spelter produced there, and to distinguish it from the other plants operated by the zinc company. The zinc company owns the Depue & Northern Railroad, which purports to be a common carrier, and is engaged solely in handling traffic between the plant of the zinc company and the rail lines which reach Depue. The Depue & Northern has a connection with the Rock Island 4,547 feet east of the depot at Depue and 1,770 feet east of the zinc company's plant. Under a switching tariff filed with the Commission the Depue & Northern charges \$3.50 per car for switching cars between its connection with the Rock Island and the zinc plant. A switching tariff of the Rock Island authorizes absorption of the switching charges of the Depue & Northern out of the local rates to Depue, but there seems to have been no authority for absorbing such switching charges out of the proportional rate. It appears, therefore, that it was to the interest of the zinc company and its subsidiary, the Depue & Northern Railroad Company, to have these shipments considered as local to Depue rather than to receive them on the proportional rate.

Following the filing of this complaint defendants had representatives investigate the conditions at Depue with a view to determining the status of the station of Nassau, and there is considerable conflict in the testimony regarding this station. One of the zinc company's officers testified that Nassau is the name applied to the company's plant at Depue and that so far as the zinc company is concerned the words "Depue" and "Nassau" are used interchangeably; that in the ordinary course of the zinc company's business the word "Depue" is used when reference is made to the Rock Island station at that point and "Nassau" when reference is made to the zinc company's plant. There is no incorporated city named Nassau nor is there any station building which bears that designation, although some of the testimony tends to show that there is a freight platform on the line of the Depue & Northern which has been designated "Nassau." The Depue & Northern Railroad is about one mile in length. It should be borne in mind, however, that all of these facts respecting Nassau and the physical situation of the roads and the zinc plant in and about Depue have come to light through the testimony offered at the hearing in this case, and are not to be obtained from an examination of the published tariffs.

The law requires that tariffs shall state plainly the rates applicable to any transportation which railroads perform. Published tariffs are of little value if a shipper can not depend upon the statements therein contained, but must, before making shipments thereunder, travel to the destination points named in the tariffs and investigate the local conditions which may or may not modify the application of the published rates.



The joint tariff of the Chicago & Eastern Illinois and the Chicago, Rock Island & Pacific, as shown above, named a proportional rate on coal carried to Depue for transportation by rail to points beyond to which no through rates were in effect via Depue; and no through rates were in effect to Nassau via Depue from the Indiana mines. The official railway guide shows Nassau, Ill., as a station on the Depue & Northern and shows Depue, Ill., as a station on the Chicago, Indiana & Southern; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific; and Depue & Northern. The Rand-McNally atlas shows Nassau, Ill., as a station on the Depue & Northern, and the map of Illinois therein shows Nassau as a point east of Depue and west of Howe. A railway map published by the railroad and warehouse commission of Illinois shows the Depue & Northern as a steam railroad and shows Depue, Nassau, and Howe as stations thereon. Defendants answer that the official railway guide, the Rand-McNally atlas, and the map published by the Illinois commission, although they contain information furnished by the railroad companies, are not the official publications of those companies and can not control the tariffs; and we believe this contention to be sound.

The Depue & Northern Railroad Company publishes and files with this Commission its tariff, I. C. C. No. 2, entitled "switching tariff on carload freight to and from connecting lines at various junction points and local switching at stations located in Illinois," which applies between Depue, Howe, and Nassau, Ill., and junctions with connecting lines; but none of the publications mentioned would indicate to a person examining the tariffs that the Depue & Northern, which purports to be a common carrier of freight, is in effect an industrial road about one mile in length or that it is owned and operated for the benefit of the zinc company.

The principal defendants assert that they are not responsible for any misinformation which may be published in the local switching tariff of the Depue & Northern. Complainant calls attention, however, to the Chicago, Milwaukee & St. Paul tariff, I. C. C. No. B-1962, effective January 1, 1910. The Chicago, Rock Island & Pacific Railway Company is a party to this joint tariff under its concurrence FX4 No. 20, and the Depue & Northern Railroad Company is a party to said tariff under its concurrence FX4 No. 19. Index 122a of said tariff names joint rates on coal from Chicago, Ill., Milwaukee, Wis., Racine, Wis., and other points, to Nassau, Ill., which is shown as a station on the Depue & Northern Railroad. Supplements to said tariffs, showing the application of rates, contain instructions that coal destined to Nassau, Ill., shown as a point on the Depue & Northern Railroad, is to be waybilled through via Howe, Ill., routing beyond that point same as from Depue, Ill. We also note that the Depue & Northern Railroad is a party to the Chicago & Eastern Illinois Rail-

road Company's tariff, I. C. C. No. 2515, which names joint commodity rates to both Depue and Nassau. We have also found by reference to our tariff files that there are perhaps twenty tariffs published by the Rock Island to which the Depue & Northern is a party, and which name joint rates to both Depue and Nassau.

The principal defendants in this case therefore can not escape liability upon the theory that the Depue & Northern by its own publication was liable for whatever misinformation may exist regarding Depue and Nassau. Their own testimony in this case is that there is no such station as Nassau, yet each of them has published or participated in joint rates to both Depue and Nassau.

From the tariffs on file, and disregarding all other evidence in the case, it appears that the Depue & Northern showed three stations on its line, Depue, Nassau, and Howe, Ill.; that the principal defendants published a proportional rate of 75 cents applicable on coal shipped to Depue for transportation beyond that point; and that other tariffs, to which the Chicago, Rock Island & Pacific, Chicago & Eastern Illinois, and Depue & Northern were parties, named joint rates from interstate points to Nassau and showed Nassau as a point beyond Depue on the Depue & Northern Railroad.

In Fourth Section Circular No. 1, issued March 13, 1911, the Commission defined a proportional rate as follows:

A proportional rate is defined as one which applies to part of a through transportation which is entirely within the jurisdiction of the act to regulate commerce; that is, the balance of the transportation to which the proportional rate applies must be under a rate filed with this Commission.

The Commission has provided in its tariff circulars that:

Tariffs containing basing or proportional rates must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of tariffs in which bases can be found.

In this case it is of record that the proportional rate was established for the purpose of enabling mines on the Chicago & Eastern Illinois to reach destinations on the Chicago, Milwaukee & St. Paul; but no such limitation was printed in the tariff. If the purpose was to exclude points on the Depue & Northern Railroad from the application of the proportional rate, it was the duty of the publishing carriers to state that purpose plainly and unequivocally in its tariff in connection with the rate and at the page where the rate was quoted, or by reference at that place plainly made to some other provision. The Commission has frequently stated that it is the duty of a carrier to set forth in connection with the published rate any exceptions thereto or references to any rules, regulations, or conditions affecting the application of the rate; and, if this is not done, the rate is absolute and unlimited as to all points within its purported application.



In view of what has been stated as to the manner in which these defendants published the proportional rate and also named joint rates to Nassau, it is immaterial from a tariff standpoint whether the service of the Depue & Northern may or may not properly be called a switching service. From no publication available to the shipper could it reasonably be inferred that there was not beyond Depue, on the Depue & Northern Railroad, a station named Nassau; nor could it be inferred from any such publication that the Depue & Northern was engaged merely in switching traffic from the trunk line railroads to the zinc company's plant. Counsel for defendants say if complainant's contention is upheld it must be upon the theory that all freight originating at a basing point, off the rails of the carrier publishing the proportional rate, must take the proportional rate. That is not an exact statement of this case and overlooks the fact that Nassau was published as a station beyond Depue on the line of another carrier. Nor is it material in this case whether the Depue & Northern is a bona fide common carrier. Out of the revenue upon the coal here involved the Depue & Northern received in the neighborhood of \$2,000 as switching charges; and by reason of its contract with complainant it has paid only the proportional rate on this coal. As we understand it, if the proportional rate had been applied it would not have received this allowance out of the rate. The only legal foundation for the allowance to the Depue & Northern by the Chicago, Rock Island & Pacific and the concurrence of the Depue & Northern in the joint tariff above mentioned is that the Depue & Northern is a common carrier and has a right to receive a part of the joint rate. If it should appear upon investigation that the Depue & Northern is not a bona fide common carrier, that fact might have an important bearing upon the relations which now exist between it and the trunk line railroads; but so long as it holds itself out as a common carrier and these defendants make joint rates with it, innocent third parties have a right to assume that the road is what it purports to be and that defendants' published tariffs are lawful. An innocent third party is not concerned as to the legality of a published charge or the legality of a common carrier or published billing station. *Interstate Remedy Co. v. American Express Co.*, 16 I. C. C., 436.

The sole question to be determined is the identity and amount of the lawfully applicable tariff rate in effect at the time these shipments moved, and in so doing we must not confuse the *lawfulness* of the rate under other sections of the act with its *legality* under section 6. For example, a rate unreasonably high and unlawful in the sense of section 1 may, nevertheless, be the legally established standard and rule of action under section 6. The sole test of the latter is the due publication of the rate in the manner and form



prescribed by the statute. This is true of all interstate rates, at least so far as the shipping public generally is concerned, regardless of how the rate may have come to be established, whether knowingly in the usual course or inadvertently or for collusive or other improper purposes. In the present case, by the duly established tariffs above referred to, it was clearly indicated to the complainant and shippers generally that there was a proportional rate of 75 cents from point of origin in Indiana to Depue, Ill., for beyond. The tariffs show that there was a station designated as Nassau on the Depue & Northern Railroad; that this station was distinct in name from Depue; and that as Depue was the junction of the Depue & Northern with the trunk line connection, Nassau necessarily must be a point beyond Depue. It therefore follows that the proportional rate to Depue was the duly established and lawfully effective rate applicable to these shipments to Nassau under section 6 of the act. In so finding we do not mean to be understood as sanctioning the action of the carriers in establishing joint rates, divisions, or allowances, in the form of switching charges or otherwise, between the Depue & Northern Railroad and its connections. Should further investigation disclose collusive or unlawful relations between the Depue & Northern (or the Mineral Point Zinc Company) and its trunk line connections in the establishment of such rates or allowances, these matters may be dealt with under appropriate provisions of the act; and even should it appear that this proportional rate was established for improper purposes, it is nevertheless the legal standard of charges for the shipping public until withdrawn under condemnation by the Commission or by voluntary action of the carriers. The point is that regardless of the nature or motive, whether lawful or unlawful, of the negotiations, of whatever character, preceding its establishment, a rate is not affected in its character as the standard rule of action and public rate under section 6 so long as it remains in effect in the manner prescribed in the act and by our tariff regulations. In a proper proceeding its unlawfulness under other sections and the injustice resulting from its enforcement may be corrected by suitable order at the time the Commission is called upon to pass upon its reasonableness and justice. In the present case, however, there is no occasion, upon the facts, to deny to the Crescent Coal & Mining Company, the complainant herein, the full benefits of this charge, published in due form, and therefore the legal rate, as complainant has not been shown to be a party to any suspicious arrangement, and the charge apparently is a reasonable one.

This application of the statute to these facts is not a technical one, but is imperative, not only because in conformity with the strict

letter of the law, but with the only construction which will preserve the chief function of section 6 which, as declared by the Supreme Court, is to accord and require the application of the same rate to all shippers and to promote equality of treatment between them.

Upon proof of the amount due on interstate shipments under these findings, an order will be entered for reparation for the overcharge above the tariff rate which we find to exist.

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No. 4337.

OKLAHOMA PORTLAND CEMENT COMPANY

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

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*Submitted December 27, 1911. Decided June 10, 1912.*

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Rate of 17 cents per 100 pounds for the transportation of cement in carloads from Ada, Okla., to Shreveport, La., found to be unreasonable to the extent that it exceeds 15 cents.

*Will H. Hart and Flynn, Chambers & Lowe* for complainant.

*W. W. Miller and J. F. Garvin* for Missouri, Kansas & Texas Railway Company.

*A. C. Fonda* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

*E. L. Sargent* for Texas & Pacific Railway Company and International & Great Northern Railroad Company.

*E. K. Voorhees* for St. Louis & San Francisco Railroad Company and subsidiary lines.

*H. C. Koch* for Iola Portland Cement Company, intervener.

*Frank J. Thomas* for Dewey Portland Cement Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Shreveport, La., and the contiguous territory, as the record indicates, is used by the southwestern manufacturers of Portland cement as a sort of dumping ground for their product. The rate is 17 cents per 100 pounds from mills in the Kansas "gas belt" and from producing stations in the states of Oklahoma and Missouri. But from two mills in the vicinity of Dallas, at Harry's and Eagle Ford, Tex.,

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respectively, the rate to Shreveport is 13 cents per 100 pounds. All these points compete actively in the Louisiana markets. Cement moves also in large volume from the Atlantic seaboard through New Orleans, taking a rate from that port of  $12\frac{1}{2}$  cents to Shreveport. The complainant is a manufacturer at Ada, Okla., and seeks a reduction in its rate from 17 cents to  $12\frac{1}{2}$  cents. The theory on which the complaint is presented is that the rate is relatively unreasonable; that the earnings per ton per mile for the movement of 306 miles from Ada to Shreveport should not exceed the earnings per ton per mile from St. Louis and Bonner Springs, Mo.; and that the rate from Ada is unreasonable to the extent that it is higher than the rate from New Orleans to Shreveport, which is also approximately 306 miles.

The rate of 17 cents became effective on September 2, 1910, the rate previous to that date and for about one year being 15 cents per 100 pounds. The complaint, which was filed shortly prior to the advance, contains a prayer for the exercise by the Commission of its jurisdiction to suspend the effectiveness of the increased rate. But the request was denied.

The principal producing mills named on the record, with the short-line mileage to Shreveport, and the rate per ton per mile, in mills, under the existing rates on Portland cement are as follows:

Point.	Mileage to Shreveport.	Rate per ton per mile.
St. Louis, Mo.....	569	6.0
Bonner Springs, Kans.....	578	5.9
Sugar Creek, Mo.....	572	6.0
Mildred, Kans.....	489	6.9
Carlyle, Kans.....	475	7.1
Fort Scott, Kans.....	481	7.0
Iola, Kans.....	470	7.2
Humboldt, Kans.....	462	7.4
Fredonia, Kans.....	458	7.4
Chanute, Kans.....	453	7.5
Altoona, Kans.....	435	7.8
Neodesha, Kans.....	428	7.9
Independence, Kans.....	414	8.2
Dewey, Okla.....	440	7.7
Harry's, Tex.....	195	13.3
Eagle Ford, Tex.....	195	13.3
New Orleans, La.....	306	8.1
Ada, Okla. (M., K. & T.).....	321	10.6

While the cement from the complainant's mill in southern Oklahoma takes the same rate to Shreveport that its competitors enjoy from their mills in northern Oklahoma and in Kansas and Missouri, the latter have the advantage of a fuel supply immediately at hand.



The complainant must bring its coal from a distance. This, however, is a disadvantage which we shall not attempt to equalize by any readjustment of rates. Nor is there anything in the history of these rates of controlling importance. When the mill at Ada was opened in 1908 it was given a rate of 17 cents per 100 pounds, being the current rate from the Kansas gas belt to the same destination. This rate remained in effect until June 1, 1910, when the rate from the whole group was reduced to 15 cents and so remained for a period of about one year.

To northern markets the complainant pays rates that are 5 cents higher than those in effect from Dewey and from points in Kansas. On cement moving southbound to destinations in the state of Texas, on the other hand, the rates from Ada are  $7\frac{1}{2}$  cents less than the rates from Kansas gas belt points and 5 cents less than the rates from Dewey. As heretofore indicated, the rates are blanketed for movements into the state of Louisiana.

Upon all the facts appearing of record, we are of the opinion and so find that the rate from Ada is unreasonable to the extent that it exceeds 15 cents per 100 pounds. We fix that rate as the maximum for the future. The complaint relates also to other destinations in the state of Louisiana, including more particularly Alexandria. We shall enter no order with respect to those destinations, but shall expect the defendants to readjust their rates in conformity with the reduction here required to Shreveport.

An order will be entered in accordance with these conclusions.

24 I. C. C.

No. 1984.

BEAUMONT & GREAT NORTHERN RAILROAD

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted January 23, 1911. Decided June 8, 1912.*

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Through routes and joint rates on lumber from points on the line of the complainant to certain destinations ordered restored.

*James W. Orr and R. C. Duff* for complainant.

*J. L. Coleman, T. J. Norton, Robert Dunlap, and Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company and subsidiary lines.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant seeks the restoration of the joint rates on lumber and other forest products from points on its rails which were canceled by the principal defendant, the Atchison, Topeka & Santa Fe Railway Company, or its subsidiary line the Gulf, Colorado & Santa Fe, on November 28, 1908. The rates had been established about one year previously, with the International & Great Northern as an intermediate carrier. The only real issue in the case is as to the status of the complainant under the act to regulate commerce and the lawfulness and propriety of joint rates with and allowances to it. The position taken by the Santa Fe in withdrawing the rates and allowances is that the railroad of the complainant is in fact not a public carrier but a tap line controlled by timber owners and lumber manufacturers, and is operated in their interest as a plant facility, and therefore that any allowance or division to it out of the rates results in an undue preference and advantage to its owners and a corresponding discrimination against competing manufacturers on the rails of the Santa Fe who receive no allowances for the services performed by their logging railroads. The matter was in due course heard and the issues were fully argued before the Commission orally and upon printed briefs. It was later set down for further hearing in connection with *The Tap Line case*, 23 I. C. C., 277, 549.

The history of the Beaumont & Great Northern Railroad is fully disclosed of record, and the testimony covers in detail the facts respecting its facilities, its traffic, its methods and practices. It will suffice,

however, to state that the construction began in 1905 and that it was built largely to move the products of the sawmills of William Carlisle & Company at Onalaska, Tex., to the trunk lines; the logging road to the mill is not incorporated. The track as now laid and in operation extends from a connection with the Houston, East & West Texas Railway at Livingston, Tex., through Onalaska to Trinity, a distance of about 34 miles, where a junction is effected with the Missouri, Kansas & Texas and International & Great Northern railroads. Since the first hearing the track has been extended for about 15 miles beyond Trinity, to a point known as Weldon. In addition to the rolling stock, consisting of 3 locomotives, 2 passenger cars, and 90 freight cars, the Beaumont & Great Northern has several stations, with platforms, sheds for storing freight, and station buildings. It operates a regular passenger train daily in each direction over its line, and carries express matter and the mails. The passenger and baggage revenue for the fiscal year ending June 30, 1911, as reported to the Commission, aggregated \$12,614.27, while its receipts for carrying the mails was \$1,376.58 and on express traffic \$549.12. Its freight revenue during the same period was \$67,702.04. The principal tonnage was lumber and other forest products, of which 66,667 tons were handled during the fiscal year ending June 30, 1911, as shown in its report to the Commission. The total freight movement for the same period was 82,470 tons. In addition to the mills at Onalaska, formerly owned by William Carlisle & Company and now operated by the West Lumber Company, there are seven or eight other and independent sawmills of smaller capacity along the line.

The record indicates that prior to 1910 the railroad company was owned by William Carlisle & Company, a copartnership composed of William Carlisle and George W. Pennell. They also owned the mills and the timber. In that year the whole investment, including the railroad, was sold to the West Lumber Company or its stockholders. The consideration was about \$4,550,000, of which sum \$2,650,000 was apparently paid in cash and the balance, amounting to \$1,900,000, is due to William Carlisle, or to Carlisle and his associates, and is covered by a mortgage, in which he is named as optional trustee. The valuation assigned to the railroad in the transaction was \$550,000 and the title to the railroad vested in J. M. West and R. C. Duff, two of the principal owners or stockholders in the West Lumber Company. It is definitely asserted that Carlisle then had no connection with either company. On August 25, 1910, however, the railroad was repurchased by Carlisle from Duff and West for a consideration of \$555,000. One of the special considerations in the contract of sale was an undertaking on the part of the vendor, West that the West Lumber Company "will deliver to the Beaumont &



Great Northern Railroad the product of all of its mills located on the line of said railroad or upon any extension thereof," and that such shipments would be left unrouted except where special routing was designated by the consignee. It is intimated on the record that the West Lumber Company in the purchase of the sawmills and timber was backed or assisted financially by the Southern Pacific lines. Whatever may be the fact in this regard, it is of interest to observe that the Beaumont & Great Northern has obligated itself to make the Houston East & West Texas Railroad "its preferred connection where divisions are as favorable."

The Beaumont & Great Northern moves the product of the mill at Onalaska for a distance of about 19 miles to the junction with the International & Great Northern and Missouri, Kansas & Texas, or about 14 miles to the Houston East & West Texas. It performs no service in the movement of logs to the mill at Onalaska. For that purpose the West Lumber Company operates an unincorporated railroad, which it acquired with the mill and timber from William Carlisle & Company and which is known as the Onalaska & Northwestern Railroad. It consists of 10 or 15 miles of track connecting at a point about 1 mile from Onalaska with the Beaumont & Great Northern, over which the lumber company enjoys trackage rights for the movement of its logging trains to the mill, the charge for the privilege being 30 cents per train-mile. There is no authority for this arrangement in the published tariffs. We regard it as unlawful until so published and made available to all shippers on equal terms.

Upon the whole record, and in view of the existing rate adjustment in this lumber-producing territory, we have reached the conclusion that the prayer of the complainant should be granted, and that the defendants must be required to join with the petitioner, the Beaumont & Great Northern Railroad, in tariffs establishing through routes and naming joint rates from points on that line to the interstate destinations referred to on the record. It is definitely asserted on the record that William Carlisle is the owner of the Beaumont & Great Northern Railroad, but has no direct or indirect interest in the mill and timber except as above indicated. We have accepted these representations, as to his relation to the two enterprises and the relation between the complainant railroad and the lumber company, as having been made in good faith, and on the theory that the parties to the transaction fully understand their accountability under the law for any violation of its provisions.

An order will be entered in accordance with these conclusions.

INVESTIGATION AND SUSPENSION DOCKET No. 91.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FRUITS AND VEGETABLES UNDER REFRIGERATION FROM STATIONS ON THE WESTERN MARYLAND RAILWAY TO VARIOUS INTER-STATE POINTS.

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*Submitted May 24, 1912. Decided June 8, 1912.*

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Proposed advance in rates for the refrigeration of fruits and vegetables from shipping points on the Western Maryland Railway to various eastern destinations, including Washington, D. C., New York City, and points in the states of Maryland, Delaware, New Jersey, Pennsylvania, and West Virginia, not found to be justified, and rates directed to be canceled. Other rates to the west and south, contained in the same tariff, against which no protest is made, allowed to become effective without any specific finding as to the reasonableness thereof.

*Lancelot Jacques and Jos. W. Wolfinger* for complainants.  
*T. G. Smiley* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this proceeding is to be determined the reasonableness of an advance in rates for the refrigeration of fruits and vegetables, proposed in Western Maryland tariff, I. C. C. No. 3864, the operation of which has been suspended by the Commission until July 30, 1912. The advance is uniformly \$3 per car for full-tank icing and \$2 per car for half-tank refrigeration. The latter are cars with half the amount of ice used in the former.

These refrigeration rates are used principally in the transportation of peaches and apples, the growers of which are located at various stations on the Western Maryland Railway east of Cumberland, Md. The shippers between Cumberland and Hagerstown, Md., who sell their products principally in the west and south, at such places as Indianapolis, Louisville, Chicago, St. Louis, and Knoxville, are not parties to this proceeding. The protesting shippers, located east of Hagerstown, dispose of their product in the east, almost exclusively in Baltimore, Washington, Philadelphia, Newark, and New York.

Prior to the season of 1911 there appears to have been no uniform practice with reference to refrigeration on the Western Maryland, or to the rates for that service. Cars were picked up as they happened to be at hand, and the icing charge depended upon the quantity and cost of the ice. Just prior to the season mentioned the Western Maryland entered into a contract for one year with the Armour Refrigerator Car Line, the first tariff of these charges having been issued by the Western Maryland Railway, effective August 1, 1911. At the hearing the reason assigned by the general freight agent of the Western Maryland for the proposed increase in these rates was the refusal of the Armour company to renew its contract, the latter alleging that the first season's business was done at a loss of between six and seven dollars per car. There was no representative of the Armour company at the hearing, and the witness referred to was unable to specifically account for the increase, or, in fact, to express any definite opinion as to the reasonableness thereof, his testimony on that subject having consisted of an extract from a letter from the Armour company, to the effect stated. The position therefore of the Western Maryland is that the new tariff merely meets the demands of the Armour company, to which company it must make up the difference in these charges, under its contract, if the advance in this tariff is not sustained. This carrier explains that not only does it receive no part of the refrigeration charge, but in addition pays a rental to the Armour company of three-quarters of a cent per mile for the latter's equipment.

Under the practice in effect on the Western Maryland before the inauguration of the Armour service the cost of the first icing appears to have averaged about \$9 per car, and of the reicing at Baltimore about \$7.50, the two icings frequently serving to land the consignment in New York in good condition.

Below are shown the present and proposed rates, together with distances, from Hagerstown, Md., which is perhaps representative of the average distance from Western Maryland shipping points, to certain of the principal destinations of these shipments:

Hagerstown to—	Distance, miles.	Rates, full-tank.		Rates, half-tank.	
		Present.	Proposed.	Present.	Proposed.
Baltimore <sup>1</sup> .....	87	\$30.00	\$33.00	\$20.00	\$22.00
Washington.....	76	30.00	33.00	20.00	22.00
Philadelphia.....	179	32.00	35.00	21.00	23.00
New York.....	269	32.00	35.00	21.00	23.00
Boston.....	504	40.00	43.00	26.50	28.50
Indianapolis.....	591	45.00	48.00	30.00	32.00
Chicago.....	715	45.00	48.00	30.00	32.00
St. Louis.....	820	45.00	48.00	30.00	32.00
Louisville.....	595	45.00	48.00	30.00	32.00

<sup>1</sup> Interstate haul.



With only the bare statement of the Armour company of a deficit in operating expenses during the first year of its contract, and with no evidence of the details thereof, it is of course impossible to determine the question of justification of these rates from the standpoint of cost of the service, as this is a factor in refrigeration that seems to vary with the location of the shipping points, the source and cost of the ice, and perhaps in other respects. In the absence therefore of evidence bearing upon the specific transaction, a comparison of the rates under consideration with others prescribed by the Commission for like service in the same general section of the country is helpful to an extent in judging in a general way of the propriety of the increase. There have been numerous cases involving rates for refrigeration before the Commission, but the one most appropriate for comparison of these rates seems to be *Sweeney, Lynes & Co. v. N. Y., P. & N. R. R. Co.*, 20 I. C. C., 600, in which the Commission prescribed maximum rates for the refrigeration of strawberries from Norfolk, Va., and intermediate points, to Boston, Mass., ranging from \$40.80 to \$48 per car. By comparison with those rates the present charges for refrigeration from these Western Maryland points to the principal cities in which the complaining shippers sell their products—Baltimore, Washington, Philadelphia, Newark, and New York—do not seem to be proportionately lower than a reasonable charge; and the carriers having failed to introduce any specific data as to the alleged increased cost of this service, or other justifying fact, it must be held that they have failed to sustain the burden of proof to show that the proposed rates are not excessive. We shall therefore enter an order directing the cancellation of these rates to New York City, Washington, D. C., and points in the states of Maryland, West Virginia, Pennsylvania, Delaware, and New Jersey, and the maintenance of the present rates as maxima for the future.

By the same comparison the proposed rates to other eastern cities of greater distance, such as Boston and Buffalo, and to points in the west and south, certain of which have been referred to as representative, do not appear to be relatively excessive; and although there is the same lack of supporting evidence for their increase, these rates have not been protested, and not appearing to be clearly unreasonable, they will be allowed to go into effect, with the understanding that we do not make any definite finding with reference to the reasonableness thereof.

An order will be entered accordingly.

No. 4498.

NEW ROADS OIL MILL & MANUFACTURING COMPANY,  
LIMITED,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted April 15, 1911. Decided June 3, 1912.*

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Rates on cottonseed from stations in southern Arkansas on the St. Louis, Iron Mountain & Southern Railway to New Roads, La., on the Texas & Pacific Railway, found to be unreasonable and maximum rates prescribed for the future.

*Emerson Bentley* for complainant.

*Henry G. Herbel* and *Fred J. Wright* for St. Louis, Iron Mountain & Southern Railway.

*Frank Koch* for Texas & Pacific Railway Company.

#### REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant operates a cottonseed mill at New Roads, La., a point on the Texas & Pacific Railway, 78 miles south of Ferriday, La. The Texas & Pacific, in connection with the St. Louis, Iron Mountain & Southern, which extends south through Arkansas to Ferriday, forms a through route from Arkansas points to New Roads. The petition alleges that there are no joint rates between these carriers on cottonseed from Arkansas points of production on the Iron Mountain to New Roads, and that the combination of the rates to and from Ferriday results in an aggregate charge which is unreasonable; that the present rates unduly prefer St. Louis, East St. Louis, and certain Arkansas and Louisiana mills; and that defendant St. Louis, Iron Mountain & Southern Railway unlawfully discriminates against New Roads in refusing to establish joint rates, which refusal is alleged to be for the purpose of restricting the movement of cottonseed and the products thereof to its own line. It is asked that a maximum rate of 15 cents per 100 pounds be prescribed from all St. Louis, Iron Mountain & Southern stations in Arkansas, on main lines and branches south of Gurdon, Pine Bluff, and McGehee. The present

rates range from 20 to 55 cents. Reparation is asked on nine (9) carloads of cottonseed shipped by complainant from Readland, Eudora, and Lake Village, Ark., to New Roads upon which was paid a rate of 25 cents.

New Roads has a population of from 1,300 to 1,500. The capacity of complainant's mill is 80 tons per day. Prior to 1909 complainant obtained its seed from contiguous Louisiana stations, but during that season the ravages of the boll weevil so diminished the supply of cotton in Louisiana that seed had to be drawn from Texas and Arkansas. The present production of cotton in territory adjacent to complainant in Louisiana is said to be less than 5 per cent of the yield previous to 1909, while the Arkansas crop is normal.

At the hearing it developed that cottonseed from these Arkansas stations to New Roads moves under the through class-A rate to New Orleans, under an appropriate intermediate clause in defendants' tariffs, instead of upon the Ferriday combination as alleged in the petition. To points on the Iron Mountain's own rails all cottonseed is billed at commodity "column B" or gross rates, which are corrected to "column A" or net rates upon tender of the outbound product to that carrier. These net rates are 3 cents per 100 pounds lower than the rates shown in "column B." This basis applies only to mill points on the Iron Mountain, all other Iron Mountain stations taking the regular class-A rate. This practice has recently been referred to by the Commission in its report in *Red River Oil Co. v. T. & P. Ry. Co.*, 23 I. C. C., 438, and the defendant carriers herein will be expected to conform to the findings in that case.

Defendants contend that the rates petitioned for are lower than the rates sanctioned by the railroad commission of Louisiana after acquiescence therein of the cottonseed mills in that state and that a reduction in the rates from Arkansas would be reflected in the Louisiana rates; that the effect of a reduction in the rates from Arkansas would be to deprive Arkansas mills of local seed; and that the defendant carriers' revenue under the rates complainant asks for would be but temporary, or until Louisiana again produces a normal cotton crop.

We have recently passed upon the reasonableness of cottonseed rates from Arkansas points on the St. Louis, Iron Mountain & Southern Railway to Memphis, and have fixed maximum rates from many, if not all, of the stations involved in this complaint. *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 22 I. C. C., 548. Tested by the rates established in that proceeding and making due allowance for differences in distance and character of haul with respect to the number of carriers participating therein, as well as for dissimilarity of competitive conditions at the respective points of destination, we



find that the rates on cottonseed from the Arkansas stations in question to New Roads, La., are unreasonable and unjustly discriminatory to the extent they exceed the rates shown in the following table, which rates will be applied as maxima for the future:

	Cents.
Fairfield to Varner, inclusive.....	18½
Between Varner and McGehee, excluding both.....	18
Sayre to Kirkland, inclusive.....	18
Kirkland to La Pile, excluding Kirkland.....	17½
McGehee to Arkansas City, inclusive.....	17
Halley to Readland, inclusive, and including branch east of Lake Village to and including Luna.....	16½
McDermott to Warren, inclusive.....	17
Between McDermott and Montrose and between Lake Village and Montrose.....	16½
Montrose to Crossett, excluding Montrose.....	17
Montrose to Cypress, excluding Montrose.....	16½

Upon consideration of all the facts of record we are of opinion that reparation on the nine carloads of seed enumerated in the petition should be denied.

An order will be entered in accordance with these views.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 85.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF LIME IN CARLOADS FROM DITTLINGER, TEX., TO NEW ORLEANS, LA., AND BETWEEN OTHER POINTS.

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*Submitted June 1, 1912. Decided June 4, 1912.*

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Rates named in the tariffs under suspension for the transportation of lime in carloads from certain points of production in Texas found to be unreasonable to the extent that they exceed the rates named in this report.

*H. Dittlinger* for Dittlinger Lime Company.

*P. A. Walsh* for Round Rock White Lime Company.

*J. H. Chiles* for Austin White Lime Company.

*F. A. Leland* for defendants.

REPORT OF THE COMMISSION.

*PROUTY, Chairman:*

The rates involved in this proceeding of investigation are those upon lime from certain points of production in Texas, viz, Dittlinger, McNeil, Round Rock, Austin, Lime City, Oglesby, and Olga, to points in Louisiana on the Texas & Pacific Railway, the Opelousas, Gulf & Northeastern Railway, the New Orleans, Texas & Mexico Railroad, and the New Iberia & Northern Railroad. The New Orleans, Texas & Mexico Railroad is the extension of the St. Louis & San Francisco system from Houston to New Orleans. The Opelousas, Gulf & Northeastern Railway and the New Iberia & Northern Railroad are short lines, understood to be independent, running from Port Barre, upon the New Orleans, Texas & Mexico, to Crowley and New Iberia, respectively, upon the line of the Southern Pacific.

Rates by all lines from Texas points to New Orleans, Baton Rouge, and North Baton Rouge are also involved.

The lime which supplies this territory is produced in Texas, Arkansas, Missouri, and to some extent in Alabama. With a view to putting these different fields of production upon a just relation in this consuming territory, the defendants published certain rates from Texas points, effective December 24, 1908. These rates continued

in effect until the summer of 1911, when, at various dates during the months of August and September, rates from Texas points were materially reduced for the purpose of giving Texas producers a better opportunity to sell in this territory, and thereby securing a greater amount of the traffic to Texas lines.

The immediate effect of this reduction was a demand from other producing fields, and also from New Orleans, which supplies a considerable part of this territory with lime, for corresponding reductions. Since the haul from New Orleans to these various points is entirely within the state of Louisiana, the New Orleans interests applied to the Railroad Commission of that state for relief.

The Texas lines soon became convinced that insistence upon the lower rates from Texas producing points would result in reductions from both Arkansas and Missouri as well as from New Orleans, so that the net outcome would be a serious loss of revenue to carriers with no essential benefit to Texas producers. They therefore determined to restore the rates of 1908 and filed for that purpose the tariffs which are under suspension. These new tariffs in order to conform with the fourth section name rates higher than those of 1908 previously in force to three or four competitive points, which will be referred to later, but in the main the rates under suspension are those which were in effect for nearly three years from December 24, 1908.

We have examined with care both the reduced tariff of 1911, which is now in force, and the proposed tariffs which are under suspension. Many of the rates now in effect are too low both absolutely and relatively. Considering the conditions under which this transportation is conducted they do not yield a sufficient revenue to the carrier, and they do give to the Texas producer an undue advantage over his competitor in other localities. Upon the other hand, many of the rates in the schedules under suspension are too high both absolutely and relatively. The carriers have themselves suggested rates which are a compromise between those in effect and those under suspension, and which are much more satisfactory than either the effective or the suspended schedule.

The serious question seems to be as to the rate to certain competitive points of which New Orleans is the chief. The distance from McNeil, Tex., to New Orleans is 537 miles, and the rate under the schedule of 1908 was 15 cents. The rate to certain intermediate stations upon the main line of the Texas & Pacific was as high as 26 cents. In order to observe the fourth section, it was necessary in filing the new schedules to make the New Orleans rate as high as the highest intermediate rate and the suspended tariff names 27 cents to that point. It is against this rate and one or two similar rates that the protest of Texas producers is mainly directed.



New Orleans derives its supply of lime from Texas, Arkansas, Missouri, and Alabama. The rate from Alabama is 10 cents; from the other three fields 15 cents. The distance from Arkansas is about 100 miles greater than from Texas, and from Missouri about 150 miles greater. From all these sources the several rail lines disregard the rule of the fourth section at intermediate points. This record indicates that the city of New Orleans supplies surrounding territory with lime up to distances of 200 miles in some instances. Lime from Texas points, for example, is shipped through a station upon the main line of the Texas & Pacific, merchandised in New Orleans, and shipped back to that station instead of coming directly from the Texas producer. Precisely the same thing seems to be true from other lime-producing points.

So far as the facts before us disclose, this condition has been brought about entirely by competition between different railways serving New Orleans. If no other element enters into the situation this would probably be wrong. It is possible, however, that some other form of competition may control and we therefore express no opinion as to the propriety of the lower rate to the more distant point in advance of a complete investigation. It seems evident that pending such investigation, if rates from all other points of production to New Orleans, Baton Rouge, and contiguous points are to be adjusted on this theory, the same rule should be applied from points in Texas. We shall therefore allow these carriers, if they desire, to name these low rates to New Orleans, Port Chalmette, Baton Rouge, North Baton Rouge, Avondale, Amesville, Harveys, and Gretna without reference to their intermediate rates, and shall grant a temporary fourth section order to that effect.

Below is a table naming rates in cents per 100 pounds in carloads, minimum 30,000 pounds. In our opinion these are just and reasonable from the Texas points of production named in the opening paragraph of this report to the indicated stations, and the rates named in the tariffs under suspension are, in our opinion, unjust and unreasonable to the extent to which they exceed these rates. Carriers will be permitted to make these rates effective on three days' notice, and upon the filing of the necessary tariffs our order of suspension will be vacated. If such tariffs have not been made effective by July 15, 1912, an order establishing them will be issued.

The conclusions announced as to the reasonableness of these rates are without prejudice to the right of shippers to attack by formal complaint as unreasonable or unduly discriminatory the rates so prescribed, and the Commission itself will feel free to revise these rates if, upon further and fuller hearing under the pending fourth section applications involving, as they do, rates from different sources of supply, that seems reasonable and just.

Rate in cents per 100 pounds.

To—	Rate	To—	Rate.
TEXAS & PACIFIC RY., MAIN LINE.		TEXAS & PACIFIC RY., MAIN LINE—contd.	
Stonewall, La.....	17	False River, La.....	22
Gloster, La.....	17	Livonia River, La.....	22
Grand Cave, La.....	17	Lorlos, La.....	22
South Mansfield, La.....	17	El Dorado, La.....	22
Mansfield Junction, La.....	17	Sparks, La.....	22
Eudora Spur, La.....	17	Marlingoulin, La.....	22
Oxford, La.....	17	Wilsons Mill Spur, La.....	22
Pelican, La.....	17	Wheelock, La.....	22
Logans Spur, La.....	17	Slacks, La.....	22
Sodus, La.....	17	Augusta, La.....	22
Little Clover, La.....	17	Rosedale, La.....	22
Thiggins Mill, La.....	17	Mathews, La.....	22
Boleyn, La.....	17	Trinity, La.....	22
Marthaville, La.....	17	Webres Spur, La.....	22
Whitlocks, La.....	17	Wilberts, La.....	22
Shamrock Mill, La.....	17	Grosse Tete, La.....	22
Robeline, La.....	17	Morley, La.....	22
Victoria Mills, La.....	17	Choctaw Pit, La.....	22
Provencal, La.....	17	Addis, La.....	23
Robertsville Spur, La.....	17	Johns Spur, La.....	23
Gregory Spur, La.....	17	St. Delphine, La.....	23
Weavers Spur, La.....	17	Chenango, La.....	23
Cypress, La.....	17	Union Plantation, La.....	23
Horse Shoe Spur, La.....	17	Myrtle Grove, La.....	23
Montrose, La.....	17	Plaquemine, La.....	23
Henryville, La.....	17	Seymourville, La.....	23
Derry, La.....	17	Pecan Plantation, La.....	23
Hale Spur, La.....	17	St. Louis Plantation, La.....	23
Chopin, La.....	17	Bayou Goula, La.....	23
Galbraith, La.....	17	Tally Ho Spur, La.....	23
Lena, La.....	17	Aloysia, La.....	23
Quarry, La.....	17	Nottoway, La.....	23
Zimmerman, La.....	17	Dorseyville, La.....	23
Boyce, La.....	17	Catherine, La.....	23
Joyners Spur, La.....	17	Cedar Grove, La.....	23
Ashburns, La.....	17	White Castle, La.....	23
Rapides, La.....	17	Texas Plantation, La.....	23
Seips, La.....	17	Cora, La.....	23
Alexandria, La.....	17	Alhambra, La.....	23
Willow Glen, La.....	19	Laurel Ridge, La.....	23
Pendleton Spur, La.....	19	McCall, La.....	23
Moreland, La.....	19	Geary, La.....	23
Emfield, La.....	19	Souvenir, La.....	23
Chambers, La.....	19	Palo Alto, La.....	23
Lamourie, La.....	19	Smoke Bend, La.....	23
Chetwood, La.....	19	Sims Spur, La.....	23
LeCompte, La.....	19	Donaldsonville, La.....	23
Hardys Spur, La.....	19	Peytovin, La.....	23
Meekers, La.....	19	Salsburg, La.....	23
Lloyds, La.....	19	La Pice, La.....	23
Lyles, La.....	19	Winchester, La.....	23
Fords, La.....	19	Forstall, La.....	23
Scotts, La.....	19	St. Alice Plantation, La.....	23
Cheneyville, La.....	19	Burton, La.....	23
Rutledge, La.....	19	Bon Secour, La.....	23
Barston, La.....	19	Caire Spur, La.....	23
Bennetts, La.....	19	St. Emina, La.....	23
Bubenzer, La.....	19	St. James, La.....	23
Bunkie, La.....	19	Pertuits Store, La.....	23
Friths, La.....	20	Rich Bend, La.....	23
Starks, La.....	20	Jefferson Plantation, La.....	23
Virginia Spur, La.....	20	Pikes Peak, La.....	23
De Generes, La.....	20	Bessie K, La.....	23
Morrows, La.....	20	Oak Alley, La.....	23
Richards Spur, La.....	20	St. Joseph, La.....	23
Rosa, La.....	20	Vacherie Cypress Co. Spur, La.....	23
Meyers, La.....	20	Ormant, La.....	23
Goudan, La.....	20	Vacherie, La.....	23
Gordons Cane Spur, La.....	20	Laura, La.....	23
Palmetto, La.....	20	Crescent, La.....	23
Hewes Spur Sawmill, La.....	20	Home Place, La.....	23
Melville, La.....	20	Evergreen Spur, La.....	23
False Spur, La.....	22	Johnson, La.....	23
Ravenwood, La.....	22	Duke, La.....	23
Macks Spur, La.....	22	Columbia, La.....	23
McKneeley, La.....	22	Edgard, La.....	23
Bowie, La.....	22	La Sassier, La.....	23
Fordoché, La.....	22	Tie Camp, La.....	23

Rate in cents per 100 pounds.

To—	Rate.	To—	Rate.
TEXAS & PACIFIC RY., MAIN LINE—contd.		SIMMESPORT BRANCH.	
Trinity Plantation, La.....	23	Leinster, La.....	21
Mary, La.....	23	Evergreen, La.....	21
Killona, La.....	23	Cappells Spur, La.....	21
Waterford, La.....	23	Dora Spur, La.....	21
Taft, La.....	23	Cottonport, La.....	21
Hahnville, La.....	23	Avoyelles Cypress Co., La.....	21
St. Charles Siding, La.....	23	Junction, La.....	21
Katz, La.....	23		
Fashion, La.....	23	MARKSVILLE BRANCH.	
La Branche, La.....	23	Longbridge, La.....	21
Lone Star, La.....	23	Mansura, La.....	21
Ashton, La.....	23	Cocoville, La.....	21
Luling, La.....	23	Nicks, La.....	21
Ellington, La.....	23	Marksville, La.....	21
Crozier, La.....	23		
Sellers, La.....	23	SIMMESPORT BRANCH.	
Willswood Plantation, La.....	23	Planters Gin Spur, La.....	21
Waggaman, La.....	23	Moreauville, La.....	21
Westwego Elevators, La.....	23	Hamburg, La.....	21
Westwego, La.....	23	Rosewood Spur, La.....	21
Company's Canal, La.....	23	Redfish, La.....	21
South Side, La.....	23	Walside, La.....	21
Harveys Brick Yard, La.....	23	Yellow Bayou, La.....	21
La Cypress Lumber Co., La.....	23	Simmesport, La.....	21
Gouldsboro, La.....	23		
EUNICE BRANCH.		MELVILLE BRANCH.	
Eola, La.....	20	Odenburg, La.....	21
St. Landry, La.....	20	Woodside, La.....	21
Climax Spur, La.....	20	Bayou Current, La.....	21
Tate Cave, La.....	20	Elba, La.....	21
Ville Platte, La.....	20	Delana Spur, La.....	21
Point Blue, La.....	20	Goodwood, La.....	21
Chataignier, La.....	20		
Eunice, La.....	20	NAPOLEONVILLE BRANCH.	
NATCHITOCHES BRANCH.		Barton, La.....	23
Cut-Off Junction, La.....	19	Burbanks, La.....	24
Cotton Belt Connection, La.....	19	Savoie Spur, La.....	24
Ardis, La.....	19	Lula, La.....	24
Connell Spur, La.....	19	Kessler, La.....	24
Bagley Spur, La.....	19	Star, La.....	24
Lucas, La.....	19	Magnolia, La.....	24
Leonard, La.....	19	Westfield, La.....	24
Robson, La.....	19	Paincourtville, La.....	24
Gayles, La.....	19	St. Vincent, La.....	24
Woodchuck, La.....	19	Munsons, La.....	24
Pat Cash Spur, La.....	19	Napoleonville, La.....	24
Cecile, La.....	19	Elm Hall, La.....	44
Morse Spur, La.....	19		
Caspiana, La.....	19	PORT ALLEN BRANCH.	
Whitehall, La.....	19	Olivia Plantation, La.....	24
Lachute, La.....	19	Shelter, La.....	24
Howard, La.....	19	Missouri Plantation, La.....	24
Williams, La.....	19	Home Plantation, La.....	24
Westdale, La.....	19	Brusle Platform, La.....	24
Lehner, La.....	19	Stonewall Plantation, La.....	24
Abington, La.....	19	Cinclare, La.....	24
Grand Bayou, La.....	19	Antonio Plantation, La.....	24
Robinsons Gin Spur, La.....	19	Beaulieu, La.....	24
Pecan, La.....	19	Oaks Plantation, La.....	24
Harmon Spur, La.....	19	St. Michael Plantation, La.....	24
Gahagan, La.....	19	Carolina Plantation, La.....	24
Armstead, La.....	19	Port Allen, La.....	24
Hollingsworth, La.....	19	Hills, La.....	24
Hanna, La.....	19	Homestead, La.....	25
Lake End, La.....	19	Lejeunes, La.....	22
Timons Spur, La.....	19	Anchorage, La.....	24
Powhatan, La.....	19	Belmont, La.....	24
Hyams, La.....	19	Bellevue, La.....	24
Russell Spur, La.....	19	Lobdell, La.....	22
Hughs and Arons Spur, La.....	19	Lida Grove, La.....	24
Natchitoches, La.....	19	Silvary, La.....	24
Oil Mill, La.....	19	Allendale, La.....	24
Natchez, La.....	19	Barroza, La.....	24
Breville, La.....	19		



Rate in cents per 100 pounds.

To—	Rate.	To	Rate.
FORT ALLEN BRANCH—continued.		LA FOURCHE BRANCH—continued.	
Cypress Hall, La.....	24	Locust Grove Spur, La.....	24
Orange Grove, La.....	24	Elmfield, La.....	24
Devals, La.....	24	Madewood, La.....	24
Chamberlin, La.....	24	Chauffe, La.....	24
Smithfield, La.....	24	Woodlawn, La.....	24
Alfords, La.....	24	Ingleside, La.....	24
Walls, La.....	24	Porttiers, La.....	24
Abramson, La.....	24	Live Oak, La.....	24
Yatton, La.....	25	Albemarle, La.....	24
Arbath, La.....	25	Valance, La.....	24
Glynn, La.....	25	Cedar Grove, La.....	24
Gravel Spur, La.....	25	Sansnom, La.....	24
Island, La.....	25	Cleveland Spur, La.....	24
St. Clair, La.....	25	Chula, La.....	24
Loria Spur, La.....	25	Tates, La.....	24
Patius, La.....	25	Trial, La.....	24
St. Dizier, La.....	25	French, La.....	24
New Roads, La.....	25	Enterprise, La.....	24
Bertha, La.....	25	Southland, La.....	24
Beand Cane Spur, La.....	25	Trosclair, La.....	24
Bourgeois, La.....	25	Aucoins, La.....	24
Morrison, La.....	25	Laurel Grove, La.....	24
Seiberts Spur, La.....	25	Roger, La.....	24
Labarre Spur, La.....	25	Elmer, La.....	24
Schwabs, La.....	25	Tabors, La.....	24
Morganza, La.....	25	Pughs, La.....	24
Lacour, La.....	25	Home Cottage, La.....	24
Creelman, La.....	25	Abbey, La.....	24
Batchelor, La.....	25	Conlon, La.....	24
Innis, La.....	25	Thibodeaux, La.....	24
Bienvenue, La.....	25		
Lettsworth, La.....	25	NEW ORLEANS, TEXAS & MEXICO R. R.	
Reagan Spur, La.....	25	De Quincy, La.....	18
Torras, La.....	25	Sompayrac, La.....	18
Turnbull, La.....	25	Gordon, La.....	18
Coochie Spur, La.....	25	Evart, La.....	18
Black Hawk, La.....	25	Gladys, La.....	18
Shaws, La.....	25	Kernan, La.....	18
Mullens Spur, La.....	25	Bear, La.....	18
Bougere, La.....	25	Owens, La.....	18
Illinois Spur, La.....	25	Fulton, La.....	18
Fish Pond, La.....	25	Edith, La.....	18
Morville, La.....	25	Reaves, La.....	18
Bash Spur, La.....	25	Le Blanc, La.....	18
Concordia, La.....	25	Long, La.....	18
Ferriday, La.....	25	Kinder, La.....	18
N. O. & N. W. connection, La.....	25	Lauderdale, La.....	19
		Elton, La.....	19
INDIAN VILLAGE BRANCH.		Rhinehart, La.....	19
Schwings Spur, La.....	24	Wilburton, La.....	19
Holly Plantation, La.....	24	Le Croix, La.....	19
California Plantation, La.....	24	Basile, La.....	19
Louisiana Cooperage Co., La.....	24	Tyrone, La.....	20
Milly Plantation, La.....	24	Rudolph, La.....	20
Crescent Plantation, La.....	24	Eunice, La.....	20
Crescent Spur, La.....	24	Savoy, La.....	21
Nichols & Co., La.....	24	Swords, La.....	21
Bruce's Store, La.....	24	Lawtell, La.....	21
Kearneys Spur, La.....	24	Opelousas, La.....	21
Indian Village, La.....	24	Boagni, La.....	21
Neckless Spur, La.....	24	Gibbs, La.....	21
		Port Barre, La.....	21
LA FOURCHE BRANCH.		Cortablaui, La.....	23
Maginnis, La.....	24	Krotz Springs, La.....	23
Belle Terre, La.....	24	Lottie, La.....	23
Half Way, La.....	24	Livonia, La.....	23
Belle Alliance, La.....	24	Oakland, La.....	23
Scattery, La.....	24	Oscar, La.....	23
Cosa Natural, La.....	24	Celina, La.....	23
Sweet Home, La.....	24	Cholpe, La.....	23
Plattenville, La.....	24	Churchill, La.....	23
Plattenville Lumber Co. Spur, La.....	24	Erwinville, La.....	23
Church Spur, La.....	24	Lakeland, La.....	23
Nellie, La.....	24	Knapp, La.....	23
Napoleonville Cypress Co. Spur, La.....	24	Westover, La.....	23
Ratliff, La.....	24	Kahn, La.....	23
		Anchorage, La.....	23

Rate in cents per 100 pounds.

To—	Rate.	To—	Rate.
NEW ORLEANS, TEXAS & MEXICO R. R.— continued.		NEW IBERIA & NORTHERN R. R.—cont.	
Essen, La.....	23	Darby Spur, La.....	22
Siegen, La.....	23	Bushville, La.....	22
Kleinpeter, La.....	23	Huron, La.....	22
Bullion, La.....	23	Cecella, La.....	22
Nettle, La.....	23	E. Broussards Spur, La.....	22
Witten, La.....	23	Grand Point, La.....	22
Edenborn, La.....	23	Patin Spur, La.....	22
Neckar, La.....	23	Thibodeaux Spur, La.....	22
Brittany, La.....	23	Parks, La.....	22
Sorrento, La.....	23	Rousseau Spur, La.....	22
Barmen, La.....	23	St. John, La.....	22
McElroy, La.....	23	Isle Labbe, La.....	22
Waldeck, La.....	23	Levert Spur, La.....	22
Gramercy, La.....	23	Coteau Holmes, La.....	22
Garyville, La.....	23	Walet Spur No. 1, La.....	22
Terre Haute, La.....	23	Walet Spur No. 2, La.....	22
Reserve, La.....	23	Loreauville, La.....	22
Montegut, La.....	23	L. D. Broussards Spur, La.....	22
Ory, La.....	23	Vida Spur, La.....	22
Elvina, La.....	23	Sonard Spur, La.....	22
Alcazar, La.....	23	Gonsoulin, La.....	22
Kassel, La.....	23	Morbihan, La.....	22
Frellson, La.....	23	Delahoussaye Spur, La.....	22
Kenner, La.....	23	Landry Spur, La.....	22
Shrewsbury, La.....	23	Segura, La.....	22
		New Iberia, La.....	22
CROWLEY BRANCH.		OPELOUSAS, GULF & NORTHEASTERN RY.	
Rork, La.....	20	Melville, La.....	21
Jones, La.....	20	Second Lake, La.....	21
Mowata, La.....	20	Swayze Lake, La.....	21
Rhineland, La.....	20	Williamson, La.....	21
Maxie, La.....	20	Darbonne, La.....	21
Ellis, La.....	20	Sackette, La.....	21
Lawson, La.....	20	Bobbette, La.....	21
Crowley, La.....	20	Port Barre, La.....	21
NEW IBERIA & NORTHERN R. R.		Poplar Grove, La.....	21
Port Barre, La.....	22	Randall, La.....	21
Walter Spur, La.....	22	Opelousas, La.....	21
O'Neil, La.....	22	Atwood, La.....	21
St. Mary, La.....	22	Lewisburg, La.....	21
Lallonde Spur, La.....	22	Church Point, La.....	21
Benoist, La.....	22	Branch, La.....	21
Robin, La.....	22	Clarksdale, La.....	21
Smith, La.....	22	Soileau, La.....	21
Legrange, La.....	22	Rayne, La.....	21
Arnaudville, La.....	22	Crowley, La.....	21

No. 3864.

TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL  
CLUB

v.

ANDERSON & SALINE RIVER RAILROAD COMPANY  
ET AL.

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*Submitted May 17, 1912. Decided June 3, 1912.*

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Rate of 30 cents per 100 pounds for the transportation of yellow-pine lumber in carloads from points in Arkansas, Louisiana, Mississippi, and Texas to Sioux City, Iowa, held unreasonable to the extent that it exceeds 28 cents. Reparation awarded.

*George T. Bell* for complainant.

*Fred H. Wood* for St. Louis & San Francisco Railroad Company.

*F. H. Moore* for Kansas City Southern Railway Company; Arkansas Western Railway Company; and Texarkana & Fort Smith Railway Company.

*A. P. Humburg, Blewett Lee, R. V. Fletcher, and Charles N. Burch* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

*Wallace T. Hughes and W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Trinity & Brazos Valley Railway Company.

*E. B. Ober* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*H. G. Herbel* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Texas & Pacific Railway Company.

*T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

*S. H. West* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

*F. C. Dillard and H. A. Scandrett* for Union Pacific Railroad Company; Houston East & West Texas Railway Company; and Houston & Texas Central Railroad Company.

*C. C. Wright* for Chicago & North Western Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.



## REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complaint is directed against the rate of 30 cents per 100 pounds on yellow-pine lumber moving in carloads to Sioux City, in the state of Iowa, from points in the states of Arkansas, Louisiana, Mississippi, and Texas. It is alleged that it is unjust and unreasonable in and of itself and as compared with the rate of 25 cents established by the Commission to Omaha. The prayer is that the Commission prescribe a just and reasonable rate or in the alternative that a reasonable differential shall be prescribed to be added to the Omaha rate to make the rate to Sioux City. As the rate to Kansas City is one cent less than that fixed by us to Omaha, for a movement that is shorter by about 200 miles, it is urged that the differential to Sioux City over the Omaha rate be fixed at one-half cent per 100 pounds, the additional haul being approximately 100 miles.

Reparation is asked on shipments moving within two years prior to the filing of the complaint.

In *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 18 I. C. C., 532, the Commission ordered a reduction in the rate to Omaha, Lincoln, and Des Moines from 26½ cents to 25 cents per 100 pounds. The record in that case and the prior proceedings wherein the Commission ordered that the rates to Des Moines and Lincoln should not exceed the rates to Omaha, *Greater Des Moines Committee v. C. G. W. Ry. Co.*, 14 I. C. C., 295; *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C., 319, are stipulated into the record herein. The general history of the rate adjustment to this territory and the competitive and transportation conditions surrounding the yellow-pine traffic were reviewed in those cases and therefore need not be restated here; nor will it be necessary here to analyze the testimony and exhibits offered in the present proceeding. Kansas City and Omaha have long been recognized as basing points on the Missouri River. Sioux City has not as yet attained that relation with respect to the through lumber traffic. Nevertheless it is entitled to reasonable rates on its movements of lumber.

In view of the rate of 25 cents per 100 pounds established by the Commission to Omaha, and giving due weight to all the facts shown of record and to the contentions of the complainants and defendants, we are of the opinion that the carload rate on yellow-pine lumber to Sioux City should not exceed 28 cents per 100 pounds. We find that for the future any rate in excess of that amount would be unreasonable. It may be well to say that such a rate was voluntarily maintained by the carriers for a period of more than two years prior to November, 1908.

Reparation will be awarded in accordance with the prayer of the petition upon presentation of a detailed statement of the traffic of the shippers named in the complaint, such statements being first presented to the defendants for verification and correction in accordance with the usual practice.

An order will be entered in accordance with these conclusions.

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No. 4495.

FLOUR CITY STEAMSHIP COMPANY ET AL.

v.

LEHIGH VALLEY RAILROAD COMPANY ET AL.

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*Submitted May 11, 1912. Decided June 4, 1912.*

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The Flour City Line, a partnership, operated under a charter party, for one season, a line of steamers between Duluth and Buffalo between which points it transported flour at a proportional rate of 6.3 cents. The rail carriers west of Duluth publish a proportional rate of 5 cents to Duluth and issued through bills of lading to New York in connection with the Flour City line. The rail carriers east of Buffalo declined to establish a through route in connection with the Flour City line, refused to recognize the through bills of lading, and accepted the traffic at Buffalo only upon local bills of lading at the local rate of 11 cents. There is an established through route and a joint rate of 23 cents between Minneapolis and New York restricted to movement via the so-called standard or railroad-owned steamers, and out of this joint rate the eastern carriers receive 9.2 cents and absorb the handling charges from the end of the steamer's gangplank. Upon petition to this Commission to establish a through route and a joint rate of 20.5 cents in connection with the Flour City line or the Flour City Steamship Company, its successor, *Held*:

1. That the publication of proportional rates by the western carriers and by the Flour City Line covering the through movement from Minneapolis to Buffalo when for beyond, the actual movement of traffic upon through bills of lading from Minneapolis at least to Buffalo, and the prepayment of freight charges, in some instances, through to New York, and in others to Buffalo, necessitating an accounting between carriers, is evidence of the common arrangement for a continuous carriage or shipment contemplated by section 1 of the act.
2. That the Flour City Line was a common carrier subject to the jurisdiction of this Commission within the meaning of section 1, and as such common carrier entitled to form a part of a through route within the meaning of sections 1 and 15.



3. That the existence of through routes capable of adequately and expeditiously handling all traffic offered is entitled to much consideration, but no longer constitutes a bar to the establishment of another through route by this Commission.
4. That the taking over of the affairs of the Flour City Line by the Flour City Steamship Company, a corporation whose stock while oversubscribed has not been paid in, and the fact that no vessels have yet been purchased or chartered by the corporation, does not deprive complainants of the right to obtain from this Commission an expression as to whether or not the steamship company will be made a party to the through route when it is physically and financially capable of transporting traffic, there being nothing to cast any shadow upon the bona fides of the corporation. Principle enunciated in *Suffern Grain Co. v. I. C. R. R.*, 22 I. C. C., 178, followed.
5. That the 9.2-cent revenue accruing to the eastern roads, while more or less arbitrarily determined by a fixed percentage of the 16.7 all-rail grain specific Chicago to New York, is, nevertheless, a division of a joint rate and can not be said to have been established without some reference to the division received by the railroad-owned lake lines, and the Commission is not prepared to hold that its acceptance only on traffic transported via the standard lines constitutes the discrimination between connecting carriers prohibited by section 3; nor is it prepared to find that this division is an absolute measure of the reasonableness of the division that should accrue to the eastern carriers on traffic reaching them at Buffalo via steamers in which they have no interest.
6. That while there may not yet be any statutory inhibition against this common ownership of rail and lake instrumentalities of carriage, the uses which it has subserved can not be said to be entirely consonant with the spirit of the law.
7. That defendants will be required to honor the through bills of lading issued by the western carriers in connection with the Flour City Steamship Company and, while the Commission does not at this time undertake to establish a joint rate, it is of the opinion that on traffic moving via such steamship company the eastern carriers should not receive a division in excess of 11 cents\* per 100 pounds, which should cover the handling of the traffic from the end of the gangplank to New York.
8. That it is the duty of defendants to provide facilities for the receipt and handling of flour that reaches Buffalo via complainant company, and if their present facilities are inadequate, facilities must be provided elsewhere and at a charge no greater than would apply via their own docks.
9. That when necessary the Pennsylvania Railroad should perform the switching from Union docks to the tracks of the Lehigh Valley and the Lackawanna, and can not now claim that so to do would necessitate the incorporation of substantially less than the entire length of its line between the termini of the proposed through route.

*Francis B. James* and *Ray M. Stanley* for complainants.

*E. H. Boles* for Lehigh Valley Railroad Company.

*J. L. Seager* for Delaware, Lackawanna & Western Railroad Company.

*Henry Wolf Bikelé* for Pennsylvania Railroad Company.

*Frank C. Ferguson* for Buffalo and Western New York millers.



## REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This proceeding was instituted by the Flour City Line and the Minneapolis Traffic Association, the former a copartnership operating, under a charter party, a line of steamers between Duluth and Buffalo; the latter a voluntary organization composed of Minneapolis merchants and millers. Since the complaint was filed the Flour City Steamship Company, a corporation organized under the laws of the state of Minnesota, has taken over the affairs of the Flour City Line, and has been substituted for the partnership as a party complainant. The reasonableness of the rate on flour from Minneapolis to New York via head-of-the-lakes and Buffalo is attacked and the establishment of a through route and joint rate from Minneapolis to New York in connection with the aforesaid steamship company is sought. Discrimination against complainant steamship company in favor of vessels owned by the eastern railroads is also alleged. Manifestly the Minneapolis Traffic Association is the complainant most interested in the reasonableness of the rate, while the steamship company, as such, is most concerned with the establishment of a through route and joint rate in connection with its line. The defense is that the existing joint rate is reasonable and has been so found by this Commission; that this complaint is a strategic move to obtain a reduction in the rate heretofore found reasonable; that there now exist ample and satisfactory through routes for the handling of this traffic; and that the Flour City Steamship Company is not a bona fide common carrier and can not be made a party to a through route. Most of the defense goes to the question of jurisdiction.

The principal carriers between Minneapolis and Duluth are the Great Northern Railway, Northern Pacific Railway, and the Chicago, St. Paul, Minneapolis & Omaha Railway, to which may be added the Minneapolis, St. Paul & Sault Ste. Marie Railway, which has recently been completed between these points. For the sake of brevity these will be referred to as the western carriers. From Duluth to Buffalo the lake transportation is performed by the Lehigh Valley Transportation Company, owned entirely by the Lehigh Valley Railroad; the Erie & Western Transportation Company, commonly known as the Anchor line, controlled by the Pennsylvania Railroad Company; the Western Transit Company, controlled by the New York Central & Hudson River Railroad Company; and the Mutual Transit Company, controlled by the Lehigh Valley Railroad Company, Delaware, Lackawanna & Western Railroad Company, New York Central & Hudson River Railroad Company, and the Erie Railroad Company, through their common ownership of the entire capital stock of the Mutual Terminal Company. These lake carriers are

commonly known as the standard lines, and will be so referred to. East of Buffalo the transportation is performed mainly by the Lehigh Valley Railroad, Delaware, Lackawanna & Western Railroad, Pennsylvania Railroad, and the New York Central & Hudson River Railroad. For a number of years the all-rail rate on flour from Minneapolis to New York has been 25 cents and the rail-lake-and-rail rate 23 cents. Out of this 23-cent rate the western carriers receive 5.8 cents, the standard lines 8 cents, and the eastern roads 9.2 cents. The history of this rate adjustment will be more fully considered when we come to deal with the reasonableness of the rate. For the present it is sufficient to say that this rate has never been satisfactory to the Minneapolis millers and has been the subject of several complaints to this Commission. On August 21, 1911, the Northern Pacific Railway published, effective September 5, 1911, a proportional rate of 5 cents on grain products from Minneapolis and other Minnesota and Wisconsin points to Duluth when destined to Lake Michigan, Lake Huron, and Lake Erie ports or points beyond. A similar rate was established by the Great Northern and the Chicago, St. Paul, Minneapolis & Omaha. This rate is still in force. Effective October 5, 1911, the western lines, under proper concurrences, published a joint rate of 21.5 cents from Minneapolis to New York. This rate was canceled before it went into effect because of the protest of the trunk line carriers, as illustrated by the following telegrams sent by C. C. McCain, chairman of the trunk line committee, and traffic officials of the same association:

SEPTEMBER 25, 1911.

W. P. KENNY, *St. Paul, Minn.*

J. G. WOODWORTH, *St. Paul, Minn.*

W. L. MARTIN, *Minneapolis, Minn.*

H. M. PEARCE, *St. Paul, Minn.*

Referring to flour and grain products tariffs announcing reduced rates from Minneapolis to become effective October fifth, published by your company, notwithstanding known protest of eastern carriers having larger revenue interest therein.

Carriers operating east of Lake Superior and Lake Michigan ports, by reason of necessity of protection of their revenue under such rates as well as protection of revenue from other extended territory, are constrained to notify you that if such reduced rates shall become effective they will demand in the division thereof the same revenue in cents per hundred pounds as now accrues under present twenty-three cents basis, Minneapolis to New York.

C. C. MCCAIN.

W. L. MARTIN,

*Chairman Flour Committee,*

*Minneapolis, Minn.*

Advice reaches us to-day that Minneapolis-Duluth lines will publish, effective October 6, rail-and-lake domestic flour rates on basis to New York of twenty-one and half cents. Interested trunk lines and lake lines, in conference to-day, again oppose this reduction, not only on account of the direct revenue loss under



these rates but also on account of known effect and reduction on flour and grain rates of all-rail and rail-and-lake routes from all central freight association and Missouri River territory, as experience has demonstrated it will be impossible to prevent reductions which will be demanded to maintain the customary rate relations.

You have previously been definitely advised that trunk lines and lake lines are strongly opposed to this reduction, and decision was reached to-day to further advise you if same is made effective it will be necessary for trunk lines and lake lines to withdraw their concurrences in such through tariffs now held by Minneapolis roads.

Furthermore, if the five-cent proportional flour and grain products rate Minneapolis to Duluth is continued, no greater amount will be recognized as accruing from Minneapolis to Duluth under any through tariffs.

Please promptly reply to Chairman McCain.

E. P. BATES.	C. S. WIGHT.
C. A. BLOOD.	S. D. BARLOW.
D. L. GRAY.	H. S. NOBLE.
P. J. FLYNN.	WALTER THAYER.
F. LA BAU.	C. O. DUNCAN.

Thereupon the Minneapolis Traffic Association induced Messrs. Norcross & Wolvine, Canadian steamboat operators, to charter two vessels to engage in this lake transportation. This was the origin of the Flour City Line, which then filed a tariff with this Commission naming a rate of 6.3 cents on flour from Duluth, when originating at Minneapolis or points taking the same rates, to Buffalo when destined beyond. In connection with the western lines they then engaged in the transportation of flour from Minneapolis to Buffalo destined to New York, which, at the 5-cent proportional rate charged by the western lines and the 6.3-cent proportional rate of the steamship company, would have made the through rate to New York 20.5 cents had the eastern carriers accepted their regular divisions of 9.2 cents; but they refused to treat this traffic as other than local and for the transportation from Buffalo to New York demanded their local rate of 11 cents. In most instances through bills of lading Minneapolis to New York were issued. These the eastern carriers would not recognize and required that local billing be taken out from Buffalo. This resulted in considerable confusion, particularly as to shipments moving on negotiable bills of lading, and also made necessary the payment by the steamship company of all handling charges from the end of the gangplank into the cars, although these charges were absorbed by the eastern carriers on traffic reaching Buffalo via the standard lines. This was the situation when the petition was filed asking that this Commission establish a through route via the complainant steamship company and the eastern carriers at a joint rate of 20.5 cents.

The only eastern carriers in connection with whom the through route is sought are the Lehigh Valley, Delaware, Lackawanna & 24 I. C. C.



Western, and a portion of the Pennsylvania Railroad used for switching purposes in the city of Buffalo. The docks at Buffalo where this freight is handled are the Lehigh Valley Lake House, Lackawanna Lake House, and the Union docks, the latter being public docks reached only by the Pennsylvania Railroad, which, in connection with the Buffalo Creek Railroad, over which the Pennsylvania has trackage rights, connects said docks with the tracks of the Lehigh Valley and the Lackawanna railroads. The Pennsylvania is under contract with Keystone Warehouse Company, the lessee of the Union docks, to perform this switching service at a charge no greater than that of the Buffalo Creek Railroad from or to industries located on its tracks from or to the same point of interchange, and it is admitted that this charge is \$2.10 per car. The Lehigh Valley Lake House and the Lackawanna Lake House are reached by those lines, respectively, and constitute the Buffalo entrepôt for two of the proposed through routes, although it is at the Union docks that the Flour City Steamship Company proposes to land, and this constitutes the Buffalo entrepôt of the third and fourth through routes, as it is sought to require both the Lackawanna and the Lehigh Valley to accept traffic so moving in connection with the Pennsylvania Railroad.

Section 1 of the act to regulate commerce provides that it shall be the duty of every common carrier subject to the provisions of this act "to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations for the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto." The duty under this section is twofold; first, through routes must be established, and second, just and reasonable rates made applicable thereto. It is with the first duty we are primarily concerned, for a failure to comply with the second does not nullify a compliance with the first. That defendants have established through routes is conceded, and the question, therefore, is whether, under section one, an additional route should be established. The theory of this provision is that carriers should freely interchange freight between their respective lines to the end that interstate commerce may move without interruption or delay. There is no contention that the present routes are insufficient to accommodate freely all traffic offered, and we are not prepared to hold that, viewed solely from this standpoint, this section imposes upon defendants the duty to establish an additional route in connection with the complainant company, for it might well be said that if this were true defendants should establish through routes in connection with

every carrier making request therefor. However, the provision in question should not be subjected to so narrow a construction, but should be read in connection with the latter portion of section 3, with section 15, and with a regard to the intendment of the act as a whole and the correction of the evils it has sought to remedy. Section three requires every common carrier subject to the provisions of the act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and forbids discrimination in the rates and charges between such connecting lines. This provision broadens section one and makes plain the intent of the Congress that every reasonable and proper facility shall be extended equally by a carrier to all of its connections and that no discrimination in its charges shall be made in favor of or against any connecting line. Section 15 then provides that this Commission may establish through routes and joint rates and prescribe the division of such rates and the terms and conditions under which such through routes shall be operated whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint rates, and it further provides that this shall apply when one of the carriers is a water line.

Prior to 1910 our power to establish through routes was limited to instances in which no satisfactory through route existed. The elimination of this limitation placed within the discretion of this Commission the establishment of additional through routes. In the exercise of this discretion the existence of through routes capable of adequately and expeditiously handling all traffic offered is entitled to much consideration, but no longer constitutes a barrier to another through route. The lower charge proposed to be made via the new route, we leave for consideration when we come to fix the joint rate. All we here hold is that it is within the power of this Commission to establish an additional route in connection with the complainant steamship company provided that company is such a common carrier as is contemplated by the law.

We shall first consider the status of the original company, the Flour City Line. This line held itself out to the public as a common carrier and actually engaged in the transportation of freight from Duluth to Buffalo, charging for such transportation rates named in tariffs published and filed with this Commission. The fact that its principal tonnage was flour in no wise deprives it of its status as a common carrier, for a common carrier may limit the character of the commodities it wishes to transport. It is urged, however, that this line was not a common carrier subject to the act to regulate com-



merce. The flour it transported moved on through bills of lading issued by the western carriers at Minneapolis showing destination New York City and routed via Duluth or Superior, Flour City Line, Buffalo, and the eastern carriers. The western lines had on file with this Commission a proportional rate of 5 cents applicable from Minneapolis to Duluth on flour so transported, and the tariff of the Flour City Line named a proportional rate of 6.3 cents to Buffalo. Transfer billing was issued at Duluth and in most instances freight charges prepaid either to New York, at a through rate of 22.3 cents, or Buffalo at 11.3 cents, made up of the aforesaid proportional rates and the 11-cent local rate exacted by the eastern lines to New York. The western roads accounted to the Flour City Line for its portion of the charges. Section 1 of the act to regulate commerce defines as subject to its provisions any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment). In this case there was no common control or management, but the publication of proportional rates by the western carriers and by the Flour City Line is in itself evidence of a *common arrangement* for a continuous carriage, and this is fortified by the movement of the traffic on through bills of lading. It is true these bills of lading were not honored by the eastern carriers beyond Buffalo, but this in no wise detracts from the continuity of the movement of the traffic from Minneapolis to Buffalo. Again, the prepayment of the charges, in some instances through and in others to Buffalo, is further evidence of the common arrangement contemplated by section one, and we therefore hold that the Flour City Line was a common carrier within the meaning of section one of the act, and as such common carrier was subject to the jurisdiction of this Commission and capable of forming a part of a through route within the meaning of section one and section fifteen. But since this proceeding was instituted the Flour City Line has been taken over by the corporation, the Flour City Steamship Company. The charter of the two boats operated by the partnership has expired and has not been renewed. No other vessels have been chartered, constructed, or purchased by the corporation, whose stock, while over-subscribed, has not been paid, even in part. When it came into existence, proper tariffs were filed reissuing the rates published by the Flour City Line, and supplements by that carrier to its tariffs issued making the proper cancellation as required by our tariff rules. We have therefore a corporation, duly empowered by charter from the state to acquire by purchase or otherwise, steamships, and operate the same as a common carrier on the lakes, filing tariffs with this Commission naming rates for the transportation of freight between Duluth and Buffalo, but lacking the facilities



with which to effect such transportation. Defendants insist that the question presented to the Commission is therefore moot and should not be entertained. Complainants answer that they are unwilling to proceed further in the perfection of the steamship company, requiring the expenditure of many hundreds of thousands of dollars, until they are assured that their efforts and investments will not go for naught. In other words, they rely upon the principle enunciated in *Suffern Grain Company v. I. C. R. R. Co.*, 22 I. C. C., 178, where we held that elevation allowances and transit privileges on grain at Cairo and not at Decatur, Ill., constituted undue discrimination against Decatur, and while complainant, a grain dealer near Decatur, had disposed of his elevator, this Commission said:

The Suffern Grain Company is still in existence and engaged in the grain business. Mr. Suffern testified that he had the means and desire to construct at Decatur an elevator for the purpose of treating and handling this corn as it is treated and handled upon the Ohio River, and that he would do so provided the adjustment of rates permitted. Other witnesses before the Commission stated that the advisability of constructing elevators at Decatur had been under consideration and that these operations had only been prevented by the present relation of rates.

The Commission would not, ordinarily, be disposed to require of these defendants the publication of tariffs which could not be used. Upon the other hand, we do not think that this complainant should be expected to expend a hundred thousand dollars in the erection of an elevator which will be of no value whatever unless the desired change in rates can be obtained. It should be its right to ascertain, in advance, whether these defendants will or whether they can be compelled to establish those rates which we have held to be just and lawful. If the defendants signify to the Commission within thirty days their acceptance of the conclusions here reached and state that they will, whenever an elevator properly equipped for the handling of this grain is erected at Decatur, comply with the findings of this opinion, no order will be made; otherwise, we will issue an order.

Under the principle enunciated in that case we do not think the position of defendants well taken. It should be borne in mind that technical defenses of this sort have no place before the Commission and will not be permitted to defeat the broad principles of the act by denying substantial justice before the only tribunal empowered to administer relief. The list of subscribers to the stock of the corporation contains the names of persons of financial standing and integrity. It is further asserted that boats will be purchased or constructed as soon as complainants are assured that they may be made parties to the through route, and we find nothing in the record that casts any shadow upon the bona fides of the steamship company or its incorporators. That this company is a means for reducing the rail-lake-and-rail rate renders it none the less a common carrier when its vessels are placed in operation. The record further shows that none of the Minneapolis flour mills have subscribed to any of this stock.

The wheat rates from the northwest and the flour rates from Minneapolis and Duluth to Buffalo and from Buffalo to New York have been the subject of previous complaints to this Commission and their adjustment exceedingly vexatious. Most of the flour milled at these points is ground from hard spring wheat and seeks the same markets in the east. Wheat, however, is shipped to Buffalo at a rate somewhat lower than flour and the milled product transported to New York at a local rate of 11 cents. Upon complaint of the Buffalo millers this Commission found that the flour rate from Buffalo should not exceed 10 cents, and reviewed in detail the competitive conditions existing at Buffalo and Minneapolis, concluding that such an adjustment would be fair. *Banner Milling Company v. N. Y. C. & H. R. R. Co.*, 13 I. C. C., 31; 14 I. C. C., 398. Subsequently complaint was filed in *Jennison v. G. N. Ry. Co.*, 18 I. C. C., 113, alleging that the rates on flour and other wheat products from Minneapolis to New York were excessive and discriminatory as compared with those from Buffalo to the same destination. The Commission found that the 23-cent rail-lake-and-rail rate on flour from Minneapolis to New York was unreasonable and discriminatory to the extent that it exceeded 21½ cents. Petitions for rehearing were filed and the issues raised in the Jennison and Banner Milling Company cases were again reviewed, resulting in a finding that the Commission must either allow an advance in the rates on flour and other grain products from Buffalo to New York or require a reduction from all territory west of Buffalo. It further appeared that a reduction in the rates from the northwest as proposed in the Jennison case would disturb the entire rate fabric from milling centers upon the Missouri River and west thereof, and create a discrimination against mills in the middle west unless their rates were also reduced. After a review of the whole situation, we concluded to permit the advance from Buffalo and vacated our order reducing the Minneapolis-New York rate. *Banner Milling Company v. N. Y. C. & H. R. R. Co.*, 19 I. C. C., 128. The effect of this action was to restore the 23-cent Minneapolis-New York rate together with the 11-cent Buffalo-New York rate.

Until the advent of the Flour City Line conditions had not materially changed, and it is now strongly urged that to grant the relief prayed for would nullify our final holding and necessitate a reduction in the grain and grain products rate as far west as the Missouri River. There has been no change in the northwestern grain rate adjustment and it is still liable to disruption by any material change in the Minneapolis to New York rail-lake-and-rail rate. Of course Minneapolis is, nevertheless, entitled to a reasonable rate, but we have already found the 23-cent rate to be reasonable, and are concluded by that decision,



unless founded upon error or upon conditions that have since undergone material change. No error appearing, we may confine ourselves to the new circumstances which have arisen. The Flour City Line published, and its successor is willing to accept for the lake haul, a proportional rate of 6.3 cents, or 1.7 cents less than the division now accruing to the standard lines; the western carriers have reduced their revenue from the 5.8 division to a proportional rate of 5 cents, a total reduction of  $2\frac{1}{2}$  cents between Minneapolis and Buffalo. If the 9.2 cent division exacted by the eastern lines were published as a proportional rate we would have a through rate of  $20\frac{1}{2}$  cents and there would have been no occasion for this proceeding; but this 9.2 cents, while more or less arbitrarily determined by a fixed percentage of the 16.7 cent all-rail grain specific Chicago to New York, is nevertheless a division of a joint rate and can not be said to have been established without some reference to the division received by the railroad-owned lake lines. Under the circumstances of this case we are not prepared to say that the acceptance of this division only on traffic received via the standard lines constitutes the discrimination between connecting carriers prohibited by section 3; nor are we prepared to find that it is an absolute measure of the reasonableness of the division that should accrue to the eastern carriers on traffic reaching them at Buffalo via steamers in which they have no interest. We recognize that this common ownership of rail and lake instrumentalities of carriage places within the power of the rail lines the stifling of water competition, and the history of lake transportation for the past fifteen years raises a strong presumption that this power has not lain dormant. Prior to the absorption of the lake lines by the railroads, the rail-lake-and-rail rates on flour had fluctuated considerably, but, in general, were a well understood and established differential of 5 cents per 100 pounds under the all-rail rate. Early in 1898, after the railroads had secured control of most of the lake lines, that differential was narrowed to 3 cents by increasing the rail-lake-and-rail rate; and in April, 1902, after the carriers had completed their control of the lake lines, it was narrowed to 2 cents by a further increase in the rail-lake-and-rail rate. While there may not yet be any statutory inhibition against this common ownership, the uses which it has subserved can not be said to be entirely consonant with the spirit of the law.

The local Buffalo to New York rate is 11 cents, out of which the \$2.10 switching charge of the Pennsylvania Railroad from Union docks is absorbed by the Lehigh Valley and the Lackawanna, but the charge for handling the freight from the end of the gangplank into cars must be paid by the steamship company, although absorbed by the eastern carriers out of their present 9.2-cent division. In other



words, the eastern lines restrict through traffic to that moving via the standard lines. This they will not be permitted to do, but will be required to honor the through bills of lading issued by the western carriers in connection with the Flour City Steamship Company. The Commission does not at this time undertake to establish a joint rate, but is of the opinion that on traffic moving via complainant steamship company the eastern carriers should not receive a division in excess of 11 cents per 100 pounds, which should cover the handling of the traffic from the end of the gangplank to New York.

Freight reaching Buffalo via the standard lines is handled at the docks of the Mutual Transit Company, the Lehigh Valley Railroad Company, and the Delaware, Lackawanna & Western Railroad Company. Much of the flour so shipped is what is termed "hold" freight; that is, flour stopped and stored in Buffalo in one of defendants' warehouses and later forwarded at the through rate. When this flour arrives at the Mutual Transit Company's docks destined to the Lehigh Valley, the contract between these carriers provides that the Mutual Transit Company will make delivery at the Lehigh Valley Lake House. This is accomplished ordinarily direct from the boat into the warehouse. When not executed in this manner delivery is made by a switching movement over the Buffalo Creek Railroad between the two docks, which switching is paid for by the transit company if performed for its convenience. If, however, the Lehigh Valley docks are crowded so that the Mutual Transit Company's steamers can not berth there, the cost of the switching is paid by the Lehigh Valley out of its proportion of the joint rate. The same situation also exists with respect to the Mutual Transit Company and the Delaware, Lackawanna & Western Railroad. The petition prays that we require defendants to receive the freight of the Flour City Steamship Company at their respective docks and also at the Union docks. It is contended both by the Lehigh Valley and the Delaware, Lackawanna & Western Railroad that their docks are inadequate for the accommodation of any vessels other than their own, and in fact these frequently have to wait because of congestion. This furnishes no answer to the charge that complainant's vessels are discriminated against in favor of the standard lines. We recently held that a rail carrier may set aside one or more of its docks for the use of particular lines so long as such practice does not conflict with its duty to give delivery at those docks to whomsoever may apply for freight properly deliverable at that point; that it may give up its entire dock facilities to some particular line if it so desire, but must make delivery upon equal terms to other lines. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 23 I. C. C., 417. Following that decision, it is the duty of defendants to provide facilities for the receipt of the flour that reaches Buffalo via the complainant company, and if their facilities

are inadequate, facilities must be provided elsewhere and at a charge no greater than would apply via their own docks.

The movement via the Union docks, a public property, requires a switching service over the Pennsylvania Railroad and the Buffalo Creek Railroad, via which the Pennsylvania has trackage rights, to the lines of the Lehigh Valley Railroad or the Lackawanna Railroad, and for this service the Pennsylvania Railroad exacts a charge of \$2.10 per car. Defendant Pennsylvania Railroad contends that the establishment of a through route via Union docks, its line and either the Lackawanna or the Lehigh Valley will compel it to incorporate in such route substantially less than its entire line between the termini of the proposed route. We do not think the point well taken. The Pennsylvania Railroad has contracted with the Union docks that it will transport all freight received via those docks, from all boat lines, to the tracks of any other carrier in Buffalo at a certain switching charge. Furthermore, it actually performed such switching on three cargoes of flour received from the Flour City Line at Union docks destined to New York. In other words, the Pennsylvania Railroad holds itself out as willing to perform and actually does perform this switching service, and it can not now be heard to claim immunity under the proviso of section 15. In this proceeding we shall not undertake to make available to complainants' steamers every dock in the city of Buffalo. The most we now hold is that complainant company is entitled to be made a party to a through route from Minneapolis to New York, and that defendants, Lehigh Valley Railroad and Delaware, Lackawanna & Western Railroad must accord flour moving via the complainant's steamers the same facilities as flour moving via the so-called standard lines. If these defendants find their docks inadequate to accommodate complainant's vessels, they must receive the freight arriving via the Union docks and moving over the Pennsylvania Railroad to their rails and accord such traffic the same rate as they apply from their own docks. This will, of course, necessitate absorption of the handling charges from the end of the gang plank at the Union docks and the \$2.10 switching charge of the Pennsylvania Railroad. Under the circumstances of this case no order will now be made, but complainants left to perfect their transportation facilities and defendants to conform to the views herein expressed. The case is held open for such further action as may become necessary in the premises.



FOURTH SECTION APPLICATIONS NOS. 1870, 2045, 2471, AND 4218.  
IN THE MATTER OF APPLICATIONS FOR RELIEF FROM  
THE OPERATION OF THE FOURTH SECTION IN REGARD  
TO CERTAIN RATES ON SALT.

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*Submitted May 24, 1912. Decided June 5, 1912.*

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Permission is denied to the direct line to maintain a higher intermediate charge for its transportation of salt in violation of the fourth section, but where the direct line observes the fourth section a competing line whose mileage exceeds that of the direct line by not less than 15 per cent is permitted to meet the rate of the direct line without reducing its present intermediate charge.

*R. B. Scott* and *G. H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

*W. F. Dickinson* and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company and St. Paul & Kansas City Short Line Railroad Company.

*F. H. Wood* for St. Louis & San Francisco Railroad Company.

*A. G. Sheer* for Atchison, Topeka & Santa Fe Railway Company.

*H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company.

*H. G. Herbel* and *C. C. P. Rausch* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*J. W. Allen* for Missouri, Kansas & Texas Railway Company.

*R. V. Fletcher* and *B. J. Rowe* for Illinois Central Railroad Company.

*N. S. Brown* and *H. E. Watts* for Wabash Railroad Company.

REPORT OF THE COMMISSION.

*PROUTY, Chairman:*

In *Board of Railroad Commissioners of the State of Kansas v. A., T. & S. F. Ry. Co.*, 22, I. C. C., 407, the Commission had before it rates on salt to the Mississippi River and territory west from points of production in Michigan and Kansas. The record in that case showed that these rates had been the subject of much controversy in the past, resulting in the adjustment then in effect which was for the most part approved by the Commission.



Carriers transporting salt from the Kansas field into this territory disregard, in some instances, the rule of the fourth section and had filed applications with the Commission asking leave to continue the charging of the higher rate at the intermediate point. The intention was to set down these applications for hearing along with the above case, but through some oversight notice was not given to all the applicants. Nevertheless the facts were in the main developed in testimony and referred to in argument.

The Commission in its report stated that, so far as that record disclosed, no justification was shown for making the higher intermediate charge, but inasmuch as certain of the interested carriers had been given no opportunity to be heard upon their fourth section applications, leave was granted to any defendant to ask for a further hearing upon that phase of the matter upon the filing of a request therefor, stating the additional facts which could be shown. Such requests were made, the applications were assigned for further hearing, and testimony has been introduced and briefs filed in support of the prayer of these applications by certain of the carriers, so that the matter is now before us for disposition upon a complete record.

Two distinct questions are presented according as the route of the applicant is direct or circuitous.

#### THE DIRECT LINE.

As will be seen by reference to the original report, which should be examined for an understanding of this report, salt of the same quality and value is produced both in Michigan and Kansas. From Michigan it moves toward the west and from Kansas toward the east. Since the value of the commodity is very low, the freight rate determines largely the cost at which it can be laid down at a particular point. Rates from these different sources of supply into midway territory lying directly west of the Mississippi River determine, therefore, to a considerable extent, whether the salt which supplies this territory shall come from Michigan or Kansas, and have naturally been in the past the subject of much controversy between carriers leading from these rival fields. As a result a scheme of rates has been devised which blankets a considerable territory west of the Mississippi River.

Rates from the Michigan field to the Mississippi River are lower than these blanket rates. Carriers leading from the Kansas field usually name rates to the Mississippi River which are not as low as the Michigan rate, but are lower than the intermediate blanket rate, and this constitutes the violation of the fourth section against which relief is sought.

St. Louis may be selected as the most marked illustration. It will be seen from the original report that rates on package salt from Michigan points to St. Louis are  $11\frac{1}{2}$  cents per 100 pounds, while from Kansas points the rate is  $13\frac{1}{2}$  cents. At intermediate points west of St. Louis and east of Kansas City rates ranging from 14 cents to 16 cents per 100 pounds are maintained. The claim of the carriers is that the St. Louis rate is unduly low, that the intermediate rate is reasonable, and that the higher intermediate charge should therefore be permitted.

The brief of one of the defendants states that formerly the rate from Kansas to St. Louis was 15 cents, and that when this rate prevailed no higher rate was maintained at any intermediate point. It was found, however, that salt could not move to that market under this rate in competition with Michigan salt, and for this reason the rate was reduced to  $13\frac{1}{2}$  cents. At the same time intermediate rates were readjusted upon the present basis.

Salt does not originate at St. Louis. While that market is located upon the Mississippi River, it does not appear that salt moves into it by water. We have here the simple case of two producing fields served only by rail lines seeking to sell in a common market.

Plainly, if lines leading from the Kansas field to St. Louis are justified in making a higher intermediate charge, then lines from the Michigan field may do the same thing. Still further, Kansas lines may upon the same pretense name a lower rate to points east of St. Louis than they name to St. Louis, and in the same way lines from Michigan may make a lower charge to the west of St. Louis than the St. Louis rate.

It is urged that St. Louis is an important market, while points both east and west of that locality are comparatively unimportant. But this should be a reason against rather than for the discrimination in favor of St. Louis. If a city is large and prosperous by virtue of natural advantages it may justly be given the benefit of its location, even though that may result in apparent discrimination against smaller intermediate points; but the mere fact that a market is important and a large consumer is not of itself this kind of a natural advantage. One important purpose of the act to regulate commerce was to stop discrimination against the weak, whether individual or locality. While market competition must always be considered, and while it may alone in some cases, perhaps, justify the granting of relief under the fourth section, we can not feel that it does in this case.

It is urged by the carriers that the present adjustment of rates is the outcome of much competitive struggle in the past, is reasonably satisfactory and ought not to be disturbed, as it will be if we prohibit



the higher intermediate charge. Even if all this were true in the particular case before us we should not feel justified in setting aside the plain requirement of Congress for the reason that in a particular instance some readjustment of present tariffs might be required. It is difficult to imagine any case to which the inhibition of the fourth section would apply if it does not here, and we are constrained to hold that direct lines leading from the Kansas fields have shown no sufficient justification for their petition to be allowed to continue the charging of a higher rate at the intermediate point, and this request must, therefore, be denied.

#### THE CIRCUITOUS LINE.

Rates from Kansas points of production to territory west of the Mississippi River are, for the most part, stated in groups, the rates themselves running from 15 cents to 19 cents. To all these points rates by all lines are the same. It frequently happens, therefore, that the long line in handling traffic to a particular point carries it through territory which takes a higher rate than that to the destination group, and this results in a violation of the fourth section.

The following illustration is taken from the brief filed by the Illinois Central Railroad Company: The rate from Hutchinson, Kans., to Onawa, Iowa, is 18 cents, the distance by the Chicago & North Western and its connections being 455 miles. The distance by the Illinois Central and its connections is 663 miles. Upon the line of the Illinois Central are certain points taking rates of 19 cents.

This Commission has held that where the direct line observes the rule of the fourth section the circuitous line may meet the rate of the direct line, although it makes a higher rate at intermediate points, provided such intermediate rate is reasonable. In such case the two points for consideration are: Is the intermediate rate reasonable, and is the line circuitous?

In the present instance, while we have not found that all these rates from the Kansas field to points west of the Mississippi River are reasonable, still we think it fairly appears that if these tariffs are readjusted so as to comply with the fourth section by the direct line, and if in the process of such readjustment no material advance is made in the present rates it should be held that the rates are reasonable in the absence of objection and to the extent of permitting the maintenance of a higher rate at the intermediate point, provided the line is circuitous.

In disposing of fourth section applications covering passenger fares we ordinarily treated a line as circuitous if it exceeded the direct line in mileage by not less than 15 per cent, and we think the



same rule might be fairly applied here. We do not hold that this rule should be made one of universal application in disposing of fourth-section applications involving rates of freight. It is possible that other elements besides mere distance should be considered and that the disabilities of a particular line might be such as would justify the higher intermediate charge even though the distance were no greater. Upon that no opinion is expressed. We simply hold that here, where the conditions under which all these lines are constructed are substantially the same, this rule may be properly applied. If any case which should involve an exception exists it has not been developed in this record.

Permission will, therefore, be denied to the direct line to maintain a higher intermediate charge in violation of the fourth section, but where the direct line observes the fourth section a competing line whose mileage exceeds that of the direct line by not less than 15 per cent will be permitted to meet the rate of the direct line without reducing its present intermediate charge.

24 I. C. C.

No. 4742.

IN THE MATTER OF ELEVATION ALLOWANCES AT  
POINTS LOCATED UPON THE MISSOURI, MISSISSIPPI,  
AND OHIO RIVERS, AND ON THE GREAT LAKES.

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*Submitted May 28, 1912. Decided June 6, 1912.*

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1. It appearing that prior proceedings in regard to these elevation allowances comprehended Missouri River points only, this proceeding was brought so as to include Ohio River points and points generally north of the Ohio River and east of the Missouri River.
2. One-fourth of 1 cent per bushel held to be fair compensation for transportation elevation at the points in question, but for both transportation elevation and commercial elevation at such points a fair compensation would be not less than three-fourths of 1 cent per 100 pounds.
3. Scale of charges for commercial elevation recommended.
4. Making of any order in this matter is postponed until reasonable opportunity has been given the parties for an adjustment on the basis recommended.
5. Nothing in the testimony tends to convince the Commission that transportation elevation can not be brought within the 10-day limit.

*J. T. Marchand* for Interstate Commerce Commission.

*E. P. Smith* and *E. P. Peck* for Omaha Grain Exchange.

*A. E. Helm* for Wichita Board of Trade.

*W. S. Washer* for Atchison Board of Trade.

*W. M. Hopkins* for Chicago Board of Trade.

*H. L. Goemann* for Toledo Produce Exchange and others.

*A. Brandeis* for Ohio River grain shippers and others.

*W. T. Cornelison* for Peoria Board of Trade.

*C. F. Peterson* for Chicago & Great Western Elevator.

*G. A. Schroeder* for Milwaukee Chamber of Commerce.

*Frank Hagerman*, *H. G. Wilson*, and *C. W. Lonsdale* for Kansas City Board of Trade.

*J. A. Theis* for Santa Fe Elevator Company.

*R. L. Callahan* for Louisville grain shippers.

*N. S. Brown*, *W. C. Maxwell*, and *F. D. McKenney* for Wabash Railroad Company and receivers.

*O. W. Dynes*, *Burton Hanson*, and *E. S. Keeley* for Chicago, Milwaukee & St. Paul Railway Company.

*F. B. Houghton* and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

*A. B. Browne* and *J. G. Schaich* for Kansas City Southern Railway Company.

*C. C. Wright* and *F. P. Eyman* for Chicago & North Western Railway Company.

*R. M. Shaw*, *G. O. Somers*, and *C. A. King* for Chicago & Alton Railroad Company and Chicago Great Western Railroad Company.

*S. E. Stohr* for St. Joseph & Grand Island Railway Company.

*R. W. Moore* and *E. C. Blanchard* for Illinois Central Railroad Company and Nashville, Chattanooga & St. Louis Railway.

*S. S. Bridgers* for Norfolk & Western Railway Company.

*A. P. Burgwin* and *W. Hodgdon* for Pennsylvania lines west.

*W. C. Coleman* for Baltimore & Ohio Railroad Company.

*G. H. Crosby* and *C. M. Dawes* for Chicago, Burlington & Quincy Railroad Company.

*W. F. Dickinson* and *H. Gower* for Rock Island lines.

*A. P. Gilbert* for Chesapeake & Ohio Railway Company.

*S. T. McLaughlin* for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

*J. A. Middleton* and *F. H. Wood* for St. Louis & San Francisco Railroad Company.

*B. E. Morgan* for New York, Chicago & St. Louis Railroad Company.

*James Webster* for New York Central lines west.

#### REPORT OF THE COMMISSION.

##### PROUTY, *Chairman*:

In June, 1908, this Commission entered two orders with respect to the payment of elevation allowances upon the Missouri River—one in the Peavey case, so called, *In the Matter of Allowances to Elevators by the Union Pacific R. R. Co.*, 14 I. C. C., 315, and the other in the St. Louis cases, *Traffic Bureau, Merchants' Exchange of St. Louis v. C., B. & Q. R. R. Co.*, 14 I. C. C., 317. In the *St. Louis cases* we directed the defendant to cease and desist from the payment of all elevation allowances upon the Missouri River; in the *Peavey case* we directed the Union Pacific Railroad to desist from the payment of an elevation allowance to Peavey & Company upon their own grain, which had been commercially treated in passing through their elevator, and to confine the payment of the elevation allowance in all cases to grain passing through the elevator in 10 days.

Certain railroads leading from the Missouri River and certain grain interests located at Missouri River points contested the validity of these orders and the matter finally reached the Supreme Court of



the United States, which in the winter of 1911 handed down a decision holding that our order in the *St. Louis cases* was unlawful; that our order in the *Peavey case* was unlawful, so far as it prohibited the payment of an elevation allowance as to the grain of Peavey & Company, which had been commercially treated, but was lawful in so far as it required that the payment of such allowance be confined to grain passing through the elevator in 10 days. *I. C. C. v. Diffenbaugh*, 222 U. S., 42.

Upon the rendition of this decision the Commission struck off its order in the *St. Louis cases*, set that proceeding down for further hearing, and on February 5, 1912, promulgated its report. *Traffic Bureau, Merchants' Exchange of St. Louis, v. C., B. & Q. R. R. Co.*, 22 I. C. C., 496.

There are two kinds of elevation, one of which may be termed transportation elevation, consisting of the passing of the grain through an elevator for the purpose of transferring it from car to car and obtaining its weight, and commercial elevation, which involves various processes in the treatment of the grain itself, like cleaning, mixing, clipping, drying, etc. The first sort of elevation is an incident to the transportation of the grain, the second to the merchandising of the grain. We reached the conclusion that the decision of the Supreme Court came to this: That the act to regulate commerce requires carriers to furnish transportation elevation; that this may be done by employing the owner of the grain to perform the service, and that the fact that this grain in the process of transportation elevation can be and is made the subject of commercial elevation also, while an advantage to the owner of the grain, is not an undue discrimination within the meaning of the act.

Upon this point we said:

The first section of the act includes in the term transportation, along with the elevation and transfer in transit of grain, refrigeration, storage, handling. It would hardly be claimed that a shipper could require a railroad to refrigerate his property for his convenience either at some point upon the line of the railroad in transit or at the end of the haul. Neither would it be claimed that the owner could at will demand storage either in transit or at the end of the route, nor that the railroad was by the terms of the statute compelled to handle car-load traffic in and out of the car. The meaning of the first section is clearly to impose upon the carrier the duty of refrigerating, storing, elevating, transferring, in so far as those matters are properly incidental to the transportation. It was the intent of Congress to compel the carrier to perform, to the full, its transportation service in all its essentials and to put that entire service within the jurisdiction of this Commission, to the end that unreasonable and discriminating charges might be prohibited. We are of the opinion that the elevation referred to by the Supreme Court is not commercial elevation, but that transportation elevation which is a necessary incident to the handling of grain from the field to the consumer.

Transportation elevation had been defined by the Commission as passing the grain through the elevator with 10 days' free storage. For the purpose of confining the payment of the elevation allowance to transportation elevation proper, we had in the *Peavey case* directed that no allowance should be made unless the grain went through the elevator within the 10-day period. Upon this point the Commission said:

It will be noted that the Commission in fixing a 10-day limit was endeavoring to confine the payment of this allowance to grain, which was the subject of transportation elevation proper, and to prevent its being extended to payment for commercial elevation pure and simple. This the court has approved, and we think that we ought to apply to other elevators upon the Missouri River the same rule for the same purpose.

We therefore decided to extend to all points upon the Missouri River the same requirement which had been made in the *Peavey case*, and entered an order requiring the defendant carriers to pay no allowances at Missouri River points where more than 10 days were occupied in passing the grain through the elevator.

Upon the making of this order in the *St. Louis cases* the carriers against whom the order ran called our attention to the fact that several lines of railway operating at the Missouri River were not defendants either in the *Peavey case* or the *St. Louis cases*, and were not therefore subject to our 10-day order. The Commission, realizing that all carriers upon the Missouri River should be subject to the same requirement in this respect, thereupon instituted this investigation, making defendants at first only those railroad companies which operated at the Missouri River and which were not already defendants in either the *Peavey case* or the *St. Louis cases*.

As the effective date of our order in the *St. Louis cases* approached, interests upon the Missouri River filed a petition in the Commerce Court attacking the lawfulness of that order. One ground of complaint most earnestly insisted upon in the petition was that to apply this order to the Missouri River and not to other grain markets would create a discrimination against that locality. This Commission had often said in the course of these various proceedings that whatever rule was finally established ought to be of universal application. It had, by the institution of No. 4742, recognized the principle that all carriers operating at the Missouri River should be treated alike in this respect. Without, therefore, inquiring whether failure to embrace other markets would or would not invalidate our 10-day order as to the Missouri River, we determined to so broaden this investigation as to take in the Ohio River and points generally north of the Ohio and east of the Missouri. This was done, all the principal grain-carrying roads being made defendants. Notice of the proceeding was given to grain interests in all parts of the terri-



tory involved, so far as was possible, and the matter was set down for a hearing at Washington, at which hearing there was a general attendance of the defendant railroads and the interested grain shippers.

Upon the first hearing in this proceeding, when it was confined merely to lines operating at the Missouri River, certain grain markets to the east of that river, notably Chicago, had intervened, stating that the elevation allowance generally paid at points other than the Ohio River and the Missouri River was one-fourth cent per bushel, and expressing the opinion that the elevation allowance upon the Ohio and Missouri rivers should be reduced to that amount, thus making the payment at all competitive points uniform. It was further stated that this allowance should include merely the transfer of the grain and that whenever a railroad owning an elevator gave free elevation, instead of paying an allowance, it should be required to make a reasonable charge for the commercial services rendered in connection with the grain, like mixing, cleaning, etc.

Upon the final hearing of this matter it was stated that grain interests upon the Ohio River, after consultation, had agreed that the allowance paid at those markets should be reduced to one-fourth of 1 cent per bushel and that a large number of shippers, but not a majority, upon the Missouri River were of the same disposition. Communications were received by the Commission from grain-handling organizations at the principal markets upon the Ohio River, confirming this statement, while from the Missouri River came protests against the reduction of the present allowance.

The matter therefore stands like this: In all eastern territory except upon the Ohio and Missouri rivers the elevation allowance for a long time has been and now is one-fourth of 1 cent per bushel. This is supposed to cover merely the passing of the grain through the elevator. If the owner of the grain obtains additional storage, or if the grain is subjected to any of the various commercial processes, an additional payment is required. The extensive territory in which this arrangement prevails desires that it may be continued.

The present elevation allowance upon the Ohio River when the grain goes east is one-fourth of 1 cent per bushel; when it moves to the south the allowance is three-fourths of 1 cent per 100 pounds. Those markets, in the interest of uniformity and in a desire to lay this matter permanently at rest, are willing to accept a uniform allowance of one-fourth cent per bushel.

All grain dealers upon the Missouri River insist that the present allowance does not more than cover the cost of the service, but a considerable portion of the elevators in that locality are in favor of settling this controversy upon the basis of one-fourth of 1 cent per



bushel. A majority, however, insists that the present allowance shall be adhered to.

Upon this showing Chicago and allied interests asked the Commission to prohibit the payment of any allowance at the Missouri River and elsewhere in excess of one-fourth cent per bushel, and stated that they were prepared to show that this amount was sufficient to cover the cost of transfer. The Commission thereupon directed the taking of testimony at these various markets to show the cost of transfer, and such testimony has been taken at considerable length, briefs having been filed by the various parties.

In dealing with this subject in the past the Commission has treated as elevation whatever was performed at the ordinary elevator. We prohibited the payment of the elevation allowance in the *St. Louis cases* upon the theory that this was not intended to cover a transfer of the grain nor any other transportation service, but rather the commercial service which the elevator performed in the merchandising of the grain.

It is extremely difficult to separate transportation elevation from commercial elevation. Both things are parts of the same general process. The same plant facilities, the same power, the same gang, are employed, and the process of transfer and the commercial process go on at the same time. It has, therefore, been found impossible to separate the different items of expense and to say with confidence this belongs to transportation and this to commercial elevation.

Very much must also depend upon the amount of business transacted and the conditions under which it is transacted. If an elevator runs to its transfer capacity it might be an altogether different thing than if it ran to its storage capacity with comparatively little transfer.

Originally the transfer was made by the railroad itself directly from car to car. Various appliances were devised for performing this service, and grain was often transferred by private parties at so much per bushel. When it finally became evident that the transfer could be best made through the elevator and in connection with these various commercial operations, one-fourth of 1 cent per bushel was agreed upon in eastern territory as fairly representing the cost of the transfer, or that part of the elevation for which the railroad ought fairly to pay. This same amount has been adhered to upon the same theory ever since.

Exercising our best judgment upon all the facts before us, we are of the opinion and find that if this allowance should be confined solely to what we have defined as transportation elevation, then one-fourth of 1 cent per bushel is fair compensation for that service; that is, it covers the cost of the service and something beyond. If,

however, the railroad is entitled to compensate the owner of the grain, not only for transportation elevation but for commercial elevation as well, then, in our opinion, the three-fourths of 1 cent per 100 pounds can not be properly reduced.

If, now, the Commission is of the opinion that these allowances should be confined to transportation elevation and that one-fourth of 1 cent per bushel is a fair compensation for that service, why should it not comply with the general desire and direct carriers to desist from paying more than that amount upon the Missouri River? The answer to this inquiry is found in the existence at these Missouri River markets of what is known as the railroad elevator.

Nearly all railroads operating upon the Missouri River own elevators at one or more of those grain markets. These elevators are frequently leased to grain dealers, sometimes at an almost nominal rental and sometimes upon a fairly compensatory basis. In many instances, however, the elevators are operated by the railroad itself, either directly or, usually, through the intervention of a subsidiary company which does not engage in the grain business itself.

At the present time these railroad elevators include as a part of their elevation service the cleaning, mixing, and clipping of the grain; occasionally other operations may be included.

If now we require the railroad to limit its allowance to one-fourth of 1 cent per bushel when paid to a private elevator, while the railroad elevator is still permitted to extend to its patron not an elevation allowance but an elevation service, which includes both transportation and commercial elevation, plainly a discrimination arises in favor of the shipper who uses the railroad elevator and against the shipper who employs his own elevator for these commercial operations. In order, therefore, to do justice at the Missouri River, where these railroad elevators exist, we must not only prohibit the payment by the railroad to the private elevator of more than one-fourth cent per bushel, but we must also prohibit the railroad from rendering for the shipper at its own elevator, free, any service beyond transportation elevation proper. We must go further. We must determine what is a just charge for these commercial operations and insist that the railroad elevator, if it performs the operations, shall charge not less than the sums found reasonable.

All this is fully recognized by the parties to this proceeding and considerable testimony has been introduced tending to show what would be a fair charge for these different commercial processes. The parties do not altogether agree and the testimony is not very satisfactory. Upon the whole we are of the opinion that the following figures are substantially just:



For storing, one-fourth cent per bushel for each 10 days or part thereof after the first 10 days.

For clipping, one-fourth cent per bushel.

For cleaning, one-fourth cent per bushel.

For mixing or turning, one-eighth cent per bushel.

For sulphuring, one-eighth cent per bushel.

For drying, from 1 to 1½ cents per bushel.

For sacking, one-half cent per bushel (sacks and strings to be furnished by owner of the grain).

While it may be that this Commission, for the purpose of preventing discrimination, may have the jurisdiction to make the comprehensive order which would be required to establish the one-fourth cent allowance and these various charges, still an attempt to do this would probably lead to further litigation of which the outcome would be doubtful. The safer way would seem to be, if the necessity for making any order arises, to apply generally the 10 days' limitation which has been approved by the Supreme Court.

This Commission believes that the payment of all elevation allowances and the giving of all free elevation should be prohibited, for in no other way can discrimination be prevented. Every service of benefit to a shipper should be charged for at a reasonable sum and no advantage should be allowed one shipper over another. The Supreme Court of the United States has, however, decided that under the act to regulate commerce some sort of an elevation allowance may be made and this decision we fully accept.

The query now arises as to the manner in which this right to make an allowance can be exercised with the least discrimination. It seems evident that the same allowance should be made at all points which are fairly competitive with one another, and this means that the same allowance should be made, since the cost of performing the service is substantially the same, upon the Missouri River which is made upon the Mississippi River, upon the Ohio River, at Chicago, and at various other points in eastern territory through which this grain moves by rail upon its way to market. This condition would be realized if the allowance upon the Missouri River were reduced to one-fourth of 1 cent per bushel and if railroad elevators were to charge a fair compensation for commercial services performed. We strongly recommend that this matter be adjusted upon that basis, and we shall postpone the making of any order in this matter until reasonable opportunity has been given for such an adjustment. Unless some such arrangement is at once established, the Commission will proceed to the making of an order probably applying generally the 10-day rule which the Supreme Court has approved.

Upon this last point it should be said that considerable testimony was introduced in the course of this investigation showing that to



confine these allowances to grain passing through the elevator in 10 days would be to largely prohibit the payment of such allowances altogether. We understood when the original order in the *Peavey case* was made that its tendency would be to confine the payment of these allowances to transportation elevation and to prevent their application to commercial elevation. Nothing in the testimony which we have heard tends to convince us that transportation elevation can not be brought within the 10-day limit.

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No. 4592.

DIERKS & SONS LUMBER COMPANY

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

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*Submitted May 20, 1912. Decided June 3, 1912.*

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Following *Leonard v. K. C. S. Ry. Co.*, 13 I. C. C., 573, the refusal of the defendants to absorb the charges of a delivering belt line to the extent of their general switching absorption on lumber in Kansas City found to be discriminatory. Reparation awarded.

*Kirkpatrick, McCollum & Kirkpatrick* for complainant.

*Martin L. Clardy, Henry G. Herbel, and Fred G. Wright* for Missouri Pacific Railway Company.

*S. W. Moore and John G. Schaich* for Kansas City Southern Railway Company.

*William C. Lucas* for Kansas City & Westport Belt Railway Company.

*Edward T. Dickinson* for St. Louis & San Francisco Railroad Company.

#### REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The facts in this case differ from the facts developed in *Leonard v. K. C. S. Ry. Co.*, 13 I. C. C., 573, only in that the traffic here involved is lumber, while the traffic involved in that case was coal; otherwise the two proceedings are substantially identical, and the same principle must control.

Dodson is a suburb of Kansas City about 2 miles south of the municipal limits. Generally speaking, it takes Kansas City rates. It is served by the Missouri Pacific, the Frisco, and the Kansas City Southern. These lines, passing through Dodson and thence through the eastern part of Kansas City, reach points on their own rails in the commercial and industrial quarters of the latter community. They also there interchange traffic with one another and with the Kansas City Terminal, which they own in connection with other trunk lines. They are thus able to give store-door or reasonable team-track delivery to all factories and warehouses in those sections of the city. Under appropriate tariff provisions the Kansas City rate applies, generally speaking, to all points in the switching district, and the carrier having the line haul absorbs the switching charges to and from points in the switching district off its own rails. But such charges are absorbed only when delivery is made to a connection within the switching limits. Dodson is not within the switching district.

The defendant, the Kansas City & Westport Belt Railway, herein referred to as the Westport Belt, is operated by electricity. It extends from Dodson about 9 miles northward into a section of the city now known as Westport, but which was formerly a separate municipality. The line is properly to be classified as an interurban road, although it is said to be controlled by the Metropolitan Street Railway Company of Kansas City. It runs partly over the public highway and partly over its own right of way. It carries freight as well as passengers.

In *Leonard v. K. C. S. Ry. Co.*, *supra*, a coal dealer, having retail yards at various points in the city, was induced by the Westport Belt, on its agreement to transport his coal in carloads from Dodson to Westport for 20 cents a ton, to locate a yard at Westport. The coal originated beyond Dodson, and the complainant paid the Kansas City Southern its full rate to that point, and later paid the Westport Belt its rate of 20 cents a ton to Westport. At that time the tariff of the Kansas City Southern provided that it would absorb \$3 a car on coal and lumber destined to points on the Westport Belt; the Westport Belt therefore received from the complainant its full legal rate of 20 cents a ton, and in addition received from the Kansas City Southern \$3 a car. It admitted that it was under a sort of moral obligation to refund this switching allowance on the past shipments of the complainant, but it denied any legal obligation to do so, and in fact had refused to do so. The complainant insisted that he ought in some way to get the benefit of this switching allowance, and in his complaint demanded an order to that effect. The reasonableness of the rate to Dodson was not involved; nor was the reasonableness of

the rate of the Westport Belt from Dodson to Westport questioned. The only contention was that the complainant was entitled to the benefit of the switching allowance on his past shipments and to an order requiring the Kansas City Southern and its codefendants to continue the absorption. This contention was sustained; but no order was entered. It is our understanding however that the refund was made on the past shipments, and that the trunk lines continue to make an allowance of \$3 a car to the Westport Belt on coal carried by it to a point within the switching limits.

The complainant in the case now before us has two lumber yards in that part of the city that is reached by the defendant steam lines and their terminal line connection. Two other yards are in the southern part of the city, one in Waldo and one in Westport. The latter is within a half mile of a team track of the Westport Belt; a spur track of the Westport Belt runs directly into the former yard. Both are within the municipal limits of the city. The lumber rate to Kansas City on yellow pine from group 5, which is fairly representative of the traffic, is 24 cents a 100 pounds. This is also the rate to Dodson. When destined to the two yards within the established switching district any of the three defendant steam lines, having a line haul, will absorb the charges for any switching that may be necessary to effect delivery. They absorb a switching charge of \$3 a car to the Westport yard of the complainant which is north of Forty-seventh street. Their tariffs provide for no absorption when the cars are destined to the other yard reached by the Westport Belt and are in fact handled by that line. The result is that on such shipments the complainant must pay the full 24-cent rate to Dodson and in addition must pay the Westport Belt its full charge to the Westport and Waldo yards, amounting to about \$7 a car. The \$3 is subsequently returned on shipments to the Westport yard, but the absorption is not made on shipments to the Waldo yard. The aggregate charge in both cases is complained of as an unreasonable burden on the traffic, and the complainant demands an order requiring the defendants to establish reasonable charges and to pay it reparation on past shipments amounting to about \$5,000.

In this case, as in the case cited, no ground is shown for the establishment of through routes and joint rates on lumber to points on the Westport Belt. No effort was made to prove that the rate on lumber to Dodson is excessive or that the charges of the Westport Belt from Dodson to Westport and Waldo are too high. The general contention is that the complainant ought not to be compelled to pay more on lumber destined to those two yards than it pays on lumber destined to its two yards reached by the defendant trunk lines and their terminal connection. This, however, is simply a point of view, and is not supported by any showing.



Upon a careful examination of the whole record, we have arrived at the conclusion that the rate situation above described subjects the complainant to undue discrimination and that substantial justice will be done in this case by following the conclusions reached in *Leonard v. K. C. S. Ry. Co.*, *supra*, namely, by requiring the defendant trunk lines to absorb \$3 a car of the belt line's charges. We shall enter no order unless an order shall prove to be necessary. The defendants will be expected to give prompt effect to these conclusions by the necessary readjustment of their tariffs. In this connection it is well to call attention to the fact that the Westport Belt is now moving this lumber from Dodson to Westport points apparently without clear tariff authority. We assume that this is an inadvertence that will be corrected. At any rate, the defendants are familiar with the rules and regulations of the Commission and will revise their tariffs accordingly. The present methods for handling the absorption of the switching charge are not in accordance with Conference Ruling No. 64 and must be corrected. When all this shall have been done and a statement respecting past shipments has been checked by the parties in interest, an order awarding reparation on the basis of \$3 a car will be entered.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NO. 68.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF CEMENT IN CARLOAD LOTS.

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*Submitted April 27, 1912. Decided June 4, 1912.*

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The defendants seek to advance their rates on cement in carloads from 10 to 12½ cents per 100 pounds from certain mill points in the so-called Kansas "gas belt" to all stations on the St. Louis & San Francisco Railroad intermediate Springfield and St. Louis, Mo., including St. Louis; and to increase their rates on the same commodity from the same points of origin to certain stations on the Missouri, Kansas & Texas Railway in western Missouri. The tariffs, which have been suspended by the Commission pending inquiry into the reasonableness of the proposed rates, also contain minor advances which are not complained of, and some reductions; and, with the exception of the St. Louis & San Francisco stations intermediate Springfield and St. Louis, are filed, the carriers state, for the purpose of correcting minor tariff discrepancies and to properly realign their rates; *Held*, That from the facts of record, the proposed rates are not unreasonable.

*O. J. Dean* for Ash Grove Lime & Cement Company.

*C. L. Shepard* for Iola Portland Cement Company.

*O. F. Swanson* for Great Western Portland Cement Company.

*S. A. Smith* for United States Portland Cement Company.

*Fred H. Wood* for St. Louis & San Francisco Railroad Company.

*R. B. Scott* and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

*Henry G. Herbel* and *D. R. Lincoln* for Missouri Pacific Railway Company.

*J. W. Allen* for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

By tariffs, the operation of which has been suspended by the Commission until September 30, 1912, the carriers parties to this proceeding seek to increase certain of their rates on cement in carloads from 10 cents to 12½ cents per 100 pounds. The points of origin are Mil-

dred, Iola, Chanute, and Gas, Kans., and are all in the so-called "gas belt." The points of destination include all stations on the St. Louis & San Francisco Railroad between Springfield, Mo., and St. Louis, Mo. No change is contemplated in the present rate of 10 cents to Springfield. The proposed rate of  $12\frac{1}{2}$  cents begins with the first station east of Springfield and extends to and includes St. Louis. The distance from Springfield to St. Louis is 239 miles. The complainants are four companies engaged in the manufacture and sale of cement.

The suspended tariffs are supplement 5 to Atchison, Topeka & Santa Fe, I. C. C. 5655; supplement 4 to Missouri, Kansas & Texas, I. C. C. A-3555; and supplement 3 to Missouri Pacific-St. Louis, Iron Mountain & Southern, I. C. C. A-1767. They contain certain minor increases of 1 cent and less, which are not complained of; but, in addition to the proposed increase before noted, complaint is made of an advance therein of 1 cent (from 9 to 10 cents) in the rate to certain stations on the Missouri, Kansas & Texas Railway in western Missouri. The tariffs also provide for reductions ranging as high as 3 cents. The real issue is the reasonableness of the proposed rates to the St. Louis & San Francisco stations, and the testimony is practically confined to those rates. The mill points of origin will be referred to in this report as the gas belt, and the St. Louis & San Francisco Railroad as the Frisco.

The Frisco does not reach the cement-producing points involved herein, but receives shipments for St. Louis and intermediate stations at various junction points with the originating lines west of Springfield. It has cement mills on its own rails, however—one at Neodesha and one at Fredonia, Kans.—and the rate from these mills to the Frisco stations in issue is  $12\frac{1}{2}$  cents. The Frisco tariff, advancing the rate from its own producing points from 10 cents to  $12\frac{1}{2}$  cents (supplement 3 to its I. C. C. 6295), was filed with the Commission to become effective on the same date as the tariffs now under suspension, and in the absence of protests from the manufacturers at Neodesha and Fredonia, the increased rate was permitted to go into effect. We therefore have the situation of a rate of 10 cents to these Frisco stations from cement mills on connecting lines in the gas belt and a rate of  $12\frac{1}{2}$  cents from the Frisco's own mills in the same general territory.

The witness for the Frisco stated that prior to January 31, 1910, that carrier published the tariffs naming rates to its stations, with the concurrence of the originating lines, and that under its publications the rate from the gas belt to its stations intermediate Springfield and St. Louis was  $12\frac{1}{2}$  cents and to St. Louis 10 cents; that later the originating carriers concluded to issue rates from mill points on their lines in their own issues and accordingly filed tariffs effective



on the date mentioned, under which the rate from the gas belt to stations intermediate to St. Louis was reduced to 10 cents; that the Frisco, although a party to these tariffs, has never deemed that rate to be reasonable and has been endeavoring since April, 1910, to secure a restoration of the old rate of 12½ cents at the intermediate stations; that its prime object under the suspended tariffs is to advance the rate to the intermediate stations, but that under the requirements of the fourth section of the act, as amended during the period of this carrier's negotiations with the originating lines, it has become necessary to increase the St. Louis or terminal rate along with the stations intermediate. This carrier represents that the rate of 10 cents to St. Louis is also unattractive to it, especially in connection with another carrier, and further contends that an advance to that point would not injuriously affect shippers from these mills because there are other routes available via which the rate is 10 cents, although the intermediate rate would in all cases be 12½ cents, these stations, with one exception, being local to the Frisco. In other words, according to its witness, the Frisco is willing and desires to withdraw from participation in St. Louis traffic from these mills at a rate of 10 cents.

The carriers further contend that a rate of 10 cents from the gas belt to the intermediate stations unduly discriminates against the manufacturers of cement at St. Louis who have to ship to such points at a rate of 12 cents, and that protests against such an adjustment have been entered by those interests. Nothing has been brought to our attention which would justify a higher rate for the westward than for the eastward movement; and the one-half cent excess going east may find some justification in the greater distances. As stated, the distance from St. Louis to Springfield is 239 miles. However, the territory covered by this rate is blanketed to include Hannibal, Mo., 120 miles north of St. Louis, as a point of origin, and destinations as far west as Columbus, Kans.; that is, the rate applies to a minimum distance of 213 miles from St. Louis to Marshfield, Mo., 26 miles east of Springfield, and to a maximum distance of 475 miles from Hannibal to Columbus, on traffic via the Frisco through St. Louis. Considering the total distance between points of origin and destination the size of this blanket appears somewhat excessive; but large blankets have prevailed in this region on this traffic, and we are not disposed to interfere with them in this proceeding. It is said that Hannibal is included in this blanket because of short-line competition of the Missouri, Kansas & Texas from Hannibal, the distance from Hannibal to Fort Scott, for instance, being 256 miles. The Missouri, Kansas & Texas is also a direct line from St. Louis to this general territory of distribution. The Frisco's rate from St. Louis to Cherryvale, Kans., 404 miles, is 18 cents. The average

distance to Springfield from the gas belt mills involved in this complaint appears to be somewhat less than 170 miles, and from the same mills to St. Louis slightly above 400 miles. No attempt was made to establish the weighted average and there was some dispute regarding the actual distance. It is insisted that under the present rate of 10 cents cement is hauled for a much longer distance from the gas belt over two lines than the Frisco's service via its own line from St. Louis, and proportionately for a much longer distance than the two line hauls in the reverse direction, for which in each case the rate is 12 cents.

Although it is stated by complainants that their real competition at the stations in question is with St. Louis cement, it is shown as a comparison that the rate from Kansas City to Springfield, via the Frisco, is 9 cents for a distance of 202 miles, and that from Kansas City to all stations east of Springfield, to and including St. Louis, the rate is 12 cents for a maximum distance of 441 miles. A much shorter route can be figured from Kansas City to many of these stations in connection with other lines.

Defendants assert that the proposed rates to these stations intermediate to St. Louis, all of which except one are local to the Frisco, will not precipitate other advances in the general territory, or to St. Louis proper, and that the only purpose of the increase of from one-half to 1 cent per 100 pounds to points on other lines contained in these tariffs is to iron out certain tariff discrepancies; for instance, to equalize certain stations on the Missouri Pacific to which the rates are higher via that carrier direct than in connection with the Missouri, Kansas & Texas from the same points of origin.

In this understanding and upon comparison of the proposed rates with the rates from St. Louis and Kansas City to the same stations, we are not convinced that any injustice will be done to complainants should we permit these tariffs to become effective. If, in connection with other proposed increases in this territory, an attempt should be made improperly to use our disposition of this matter, we can take whatever action may seem just and proper when the time comes.

An order will be issued vacating the orders of suspension entered in this proceeding.

No. 3811.

CONSOLIDATED FUEL COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted December 14, 1911. Decided June 3, 1912.*

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1. The present relation of rates on coal to points on the Oregon Short Line and its connections in the states of Idaho, Montana, Washington, and Oregon found to be unduly discriminatory as between the Utah and Rock Springs fields, and the differential against Utah coal reduced to 25 cents a ton. The defendants are also required to establish through routes and joint rates from the Utah mines to all points taking such rates from the Rock Springs mines.
2. The rules and practices of the Denver & Rio Grande Railroad respecting the distribution of its coal-car equipment criticised.
3. The right of complainants to have the routes and rates so prescribed extended back over their industrial lines to their respective mines reserved for further examination.

*F. A. Sweet and L. L. Legg* for Consolidated Fuel Company and Southern Utah Railroad Company.

*Charles C. Dey* for Castle Valley Coal Company and Castle Valley Railroad Company.

*H. C. Edwards* for Independent Coal & Coke Company, intervener.

*Ira E. Barber* for League of Southern Idaho Commercial Clubs, intervener.

*E. N. Clark and A. C. Campbell* for Denver & Rio Grande Railroad Company.

*F. C. Dillard, P. L. Williams, N. H. Loomis, and H. A. Scandrett* for Union Pacific Railroad Company, Southern Pacific Company, and Oregon Short Line Railroad Company.

*T. J. Norton and J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company.

*Warren Olney, jr.,* for Western Pacific Railway Company.

*John A. Street* for Nevada Central Railroad Company.

*Charles S. Chandler* for Nevada Northern Railway Company.

REPORT OF THE COMMISSION.

*HARLAN, Commissioner:*

The so-called Utah coal-mining district, consisting of 9 or 10 bituminous operations, lies a little north and east of the center of the state. The mines are from 100 to 140 miles distant from Salt Lake City over the Denver & Rio Grande Railroad, the only line by



which the region is served. There is a substantial consumption within the state, but in the interstate markets the output of these mines meets very strong competition. It does not move to the eastward because those markets seem to be dominated by coal from Colorado mines. One of the strongest competitors at points to the westward is the Wyoming coal field, known as the Rock Springs and Kemmerer districts, located on the Union Pacific and the Oregon Short Line, respectively. This coal is inferior to the Utah coal in that it slacks more quickly and is not a good storage coal. Nevertheless it is strong in demand. Another competitor is the Gallup district in New Mexico. The coal from Canadian fields also reaches points in Oregon and Washington, and there is some coal in Washington.

The best markets for the Utah district are in the states of Idaho, Washington, Oregon, California, and Nevada. They are reached through Salt Lake City or Ogden. The purpose of the proceeding, among other things, is to secure joint through rates to interstate points west and north of Ogden and Salt Lake City on a parity with or reasonably related to the rates to those markets from the competing districts. That phase of the complaint we shall consider first.

To many points on the Santa Fe rails in California there were no joint through rates in effect from the Utah mines when the complaint was filed, and such rates as had been established were higher than the rates from the Gallup district by from 50 cents to \$1.85 a ton. That situation was corrected before the hearing, and to that extent the complaint has been satisfied. The Southern Pacific has also satisfied the complaint with respect to destinations on its rails in Nevada east of and including Reno, and we were assured at the hearing that it would take steps to satisfy the complaint with respect to points west of Reno. We see no reason why the rates from the Utah mines to such points should not be on a parity with the rates from the Wyoming coal fields; as a matter of fact, the distance is somewhat less from the Utah group.

With a few unimportant exceptions in southeastern Idaho, the output from the Utah and Wyoming coal mines reaches destinations on the Oregon Short Line in Idaho and Montana and points on the lines of its connections in Oregon and Washington through the Pocatello gateway. The rate to Pocatello from the Utah field is 25 cents per ton higher than the rate from the Rock Springs and Kemmerer districts. The same differential applies in the joint rates to various other destinations beyond Pocatello, but at many of these points the differential is increased to 50 and 75 cents. To points beyond the terminus of the Oregon Short Line at Huntington, where it connects with the line of the Oregon-Washington Railway & Navigation Com-

pany, there are no joint through rates from the Utah mines, although there are such rates from the Rock Springs and Kemmerer districts. The complainants demand joint through rates to all these points on a parity with the rates enjoyed by their Wyoming competitors.

In this connection, we gather from the record the following facts: (a) The average haul from the Utah group is about 122 miles longer than from the Kemmerer mines and about 22 miles longer than from the various mines in the Rock Springs district. Taking the whole situation into consideration this disadvantage in distance can not altogether be ignored. (b) The Kemmerer district is on the Oregon Short Line, while the Rock Springs mines are on the Union Pacific; but these two lines are members of the same system and movements from the two fields therefore involve a one-system haul, although in some cases the movement is a two-line haul. In all cases, on the other hand, Utah coal moving to such destinations involves a two-system haul and a two or three line movement. This is a factor not infrequently recognized in rate construction, but we attach little importance to it here. (c) It was shown in *Grand Junction Mining & Fuel Co. v. C. M. Ry. Co.*, 16 I. C. C., 452, that the output from the Rock Springs and Kemmerer fields moves to Pocatello for points beyond largely in solid trainloads. This is not the case with coal moving to the same points from the Utah mines. (d) Operating conditions on the Denver & Rio Grande from these mines to Salt Lake City are made more or less severe by unusual degrees of curvature and excessive grades, requiring three or four locomotives for each train. Operating conditions on the Union Pacific and Oregon Short Line from the Rock Springs and Kemmerer mines to Pocatello are much more favorable. (e) From the records in other cases before us which were referred to on the hearing it appears also that the empty-car movement is somewhat more favorable to the Wyoming fields than to the Utah coal district.

If these differences in conditions are to be fairly reflected in the rates, as we think they must be, they necessarily justify rates from the Utah mines that are somewhat higher than the rates from the Wyoming mines. But we think the present rate adjustment as to many points involves differentials against the Utah field that are excessive. The routes from the Utah and Wyoming fields come together at a point a few miles east of Pocatello, and from that point the movement to the destinations in question is over the same rails. To Pocatello and certain destinations beyond the rates voluntarily established by the defendants from the Utah field and now in force are a differential of 25 cents over the rates from the Wyoming field. Assuming that this is a proper relation under a \$2 rate at Pocatello, no reason is shown why



there should be a higher differential on coal passing through that point to destinations beyond. The rates from the two fields to Boise and certain other destinations in Idaho were also adjusted on the basis of a 25-cent differential against the Utah coal until, in *League of Southern Idaho Commercial Clubs v. O. S. L. R. R.*, 18 I. C. C., 562, we ordered a reduction from \$4 to \$3.50 a ton on coal from the Wyoming districts to those points. When the defendants complied with the order the Utah rates remained unchanged. The result was that the 25-cent differential became a 75-cent differential against the Utah mines as to certain points and a 50-cent differential as to certain other points. At Salt Lake City there is a parity of rates as between the competing fields and also at points west of Salt Lake City, where the mileage is slightly less from the Utah mines than from the Wyoming districts. This is a voluntary adjustment. The rate from the Wyoming districts to Helena and Butte is \$3.25; the rates to these points from the Utah mines is a differential of 25 cents higher. We understand that this also is a voluntary adjustment. To points that are reached through Butte and Helena the Utah mines, generally speaking, have the benefit of no joint through rates. This is true also with respect to points on the Oregon-Washington Railroad and its connections in the states of Washington and Oregon. The Wyoming fields, however, reach all those markets under joint through rates.

We think that through routes and joint rates should be established from the Utah mines to all destinations in this general territory to which their competitors in the Wyoming field now have the benefit of through routes and joint rates; but we do not find that the complainants have shown sufficient grounds for the parity of rates which they demand to all points. From the whole record we find that the present differentials against the Utah district where they exceed 25 cents a ton result in rates that are unduly discriminatory, and that a differential of not exceeding 25 cents a ton against Utah coal will fix a reasonable relation of rates as between the Utah and Rock Springs fields to all points in the territory in question reached through Pocatello.

The second contention in the case is that the rates which we here fix shall be extended directly to the mines of the two complainant companies and of the intervener. These mines are not on the rails of the Denver & Rio Grande but are reached by industrial railroads which the coal companies respectively own. Each of these short lines has set up a local charge against the coal company that owns it for moving its coal from its mines to the junction with the Denver & Rio Grande. This charge is not published by one of the industrial lines. The prayer of the petition is that the junction-point rate shall



be extended back to the mines and that the industrial or short lines shall have divisions. The main facts in this connection developed at the hearing may be summarized as follows:

The coal measures of this part of Utah are found in the mountain ranges on either side of the main line of the Denver & Rio Grande, most of the mines being from 15 to 25 miles distant. The country is rough and rugged. The two mines of the principal complainant lie on either side of a canyon called Miller Creek. They are about 20 miles from the rails of the Denver & Rio Grande. Coal has been mined in that canyon for about 15 years, and at one time was hauled by wagon to the Denver & Rio Grande rails. This is true also of other mines in this general district. But when the Consolidated Fuel Company was incorporated, in 1907, and had acquired its coal properties in the canyon, active steps were taken to develop them and to market the coal on a large scale. In addition to the cost of the land, \$350,000 was expended in developing the mines and \$450,000 in the construction and equipment of a railroad from the right of way of the Denver & Rio Grande to the mine. The separately organized company, known as the Southern Utah Railroad Company, is owned directly by the coal company. This \$800,000, as the president of the coal company testified, "has been invested in equipment and facilities for putting the Hiawatha mines in condition to produce and market the product." The Denver & Rio Grande did not care to build into that canyon, and the necessity of getting the coal out was a burden that the coal company had to carry. In pursuance of that policy its railroad company was incorporated and the money paid into its treasury by the coal company. The entire capital stock is owned by the coal company. This is a brief statement of the whole investment, as explained by the president of the latter company. The railroad, like the mine machinery and equipment, is simply a part of the general investment. From the mines to the tipples the coal cars are handled by cable power over a narrow-gauge track; a third rail makes this part of the line a standard gauge also; but it can only be operated with a shay engine; the balance of the track is standard gauge. In some cases the grade exceeds 6 per cent and throughout is so heavy that an ordinary consolidation locomotive can take but 10 or 12 empties from the junction, and at some points the train must be cut in two.

The history of the Castle Valley Coal Company is substantially similar. It was incorporated in 1909 and purchased a coal property in the same canyon that had been opened up about 15 years previously. In developing and equipping the mine and in constructing the rail facilities for reaching the Denver & Rio Grande about \$800,000 was expended. The railroad is incorporated as the Castle Valley Rail-

road. Its entire capital stock is owned by the coal company. Before its incorporation the coal company purchased, for \$125,000, a half interest in the track of the Southern Utah, above described, and then, from a point called Castle Junction, it laid rails for seven miles to its mine at Mohrland.

The only settlements on these lines are the small towns where the miners live. The only industrial establishments are two mercantile stores owned by the two coal companies. It is said that there is one saloon within 2 miles of the Southern Utah and there is one farm mentioned of record. The miners of course have families, and this means a post office. Each line receives a small annual revenue for carrying the mails. There is also some traveling back and forth, one line receiving about \$2,500 from that source and the other about \$3,500 a year. The miscellaneous traffic in each case is mostly company material.

The mine of the intervener, the Independent Coal & Coke Company, is only 3 miles distant from the Denver & Rio Grande right of way. Its railroad, now incorporated as the Kenilworth & Helper, was operated as a bureau of the coal company until a few days before the hearing.

Notwithstanding the close relations between these short lines and the industrial companies that own them, there are indications of the need of further information before a final disposition may properly be made of this part of the complaint. While we have referred to this section of Utah as a coal-mining district, as a matter of fact the three coal companies above mentioned, the mines of which are close together, are the only independent operations there of any importance. Although there are seven or eight other mines, they belong to the Utah Fuel Company, which is owned by the Denver & Rio Grande itself. Only one of these mines is on its main line. The others, like the independent mines above described, are in the mountains, and are reached by two branch roads constructed and operated by the Denver & Rio Grande, one 17 miles and the other about 21 miles in length. These lines apparently are also constructed along the side of canyons. Doubtless there are mining towns near the mines, but the details of the traffic over these branches are not of record. It does appear that, in apparent disregard of the spirit of the commodities clause, if not of its letter, the Denver & Rio Grande, through its coal company, sells the output of these mines commercially, and thus comes into competition with the complainants and the intervener. Moreover, the rate applies from the mines. This was true of all the mines until recently, when the rate from the Sunnyside mine was advanced 10 cents a ton over the main line rate. On the whole, we think that the record should be amplified so as to disclose what the

general situation is. It is desirable also to be advised of the practice of the Denver & Rio Grande elsewhere in making rates with short lines of this character. This feature of the case is therefore reserved, and a further hearing will be had in the near future for the purpose of developing the facts more fully.

The complaint also alleges discrimination by the defendant in the rating of mines and in the distribution of its coal-car equipment in this district. In this phase of the controversy neither the Castle Valley Coal Company nor the intervener, the Independent Coal & Coke Company, has shown any special interest. Nevertheless, enough was developed at the hearing to satisfy us that there is room for improvement in the methods of the defendant in rating mines and distributing its available equipment among them. Its rules and regulations in that regard, applicable to mines on its line in the state of Colorado, were severely criticised in *Colorado Coal Traffic Asso. v. D. & R. G. R. R. Co.*, 23 I. C. C., 458. It is clear, therefore, that the obligation is upon the defendant promptly to reexamine its practices and methods in that behalf, and, having ascertained their defects, to remedy them without delay, so that each mine in this district shall have a proper rating and its reasonable and non-discriminatory portion of available equipment in times of car shortage. We shall expect this to be done and shall hold the record open until advised of the steps taken by the defendant to comply with this suggestion.



LUMBERMEN'S EXCHANGE OF ST. LOUIS

v.

ANDERSON & SALINE RIVER RAILROAD COMPANY  
ET AL.

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*Submitted April 12, 1912. Decided May 6, 1912.*

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It satisfactorily appears from the testimony offered by defendants that the advanced rates upon hardwood and yellow pine from points of production in the southwest to St. Louis, Mo., are just and reasonable, and should not be disturbed.

*John R. Walker and Blair, Drayton & Hillyer* for complainants.  
*Fred H. Wood, Roy F. Britton, H. G. Herbel, F. H. Moore,* and  
*W. F. Dickinson* for defendants.

*Stewart, Bryan & Williams* and *P. W. Coyle* for Business Men's League of St. Louis, intervener.

*Blair, Drayton & Hillyer* for Lumbermen's Club, Furniture Board of Trade, Lumber Dealers' Association, and St. Louis Mill Men's Association, interveners.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

Effective January 5, 1911, the defendants advanced rates, both upon hardwood and yellow pine, from points of production in the southwest to St. Louis, 1 cent per 100 pounds. The Commission having declined to interfere by suspending the advanced rates, this complaint was filed attacking the lawfulness of the advance. The case has been elaborately presented, both in testimony and argument.

The burden of justifying these advances rests upon the carriers, and they have undertaken to sustain it upon several grounds, the first being that, properly considered, the new tariffs were not intended to work an advance but rather a necessary change by placing St. Louis and East St. Louis upon the same basis.

St. Louis, Mo., and East St. Louis, Ill., are separated by the Mississippi River, and the transportation of freight across this river at that point has always been expensive, whether by bridge or by ferry. Originally this expense was represented in the rates to these two localities, the general rule being that the rate to either city from any direction was lower or higher than to the other by the amount of the bridge toll. Thus, rates from the west were higher to East St. Louis, while rates from the east were higher to St. Louis.

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Until recently, all lumber from these points in question has moved by the lines of the defendants up the west bank of the Mississippi River, and therefore, when intended for East St. Louis, has moved through St. Louis and across the river, the rate being in all cases 1½ cents per 100 pounds higher to East St. Louis than to St. Louis.

The Iron Mountain road, for the purpose of securing a line with more favorable grades and curvatures, constructed a bridge across the Mississippi at Thebes and a line of railway up the east bank of that river from Thebes to East St. Louis. Operating conditions upon this line are much more favorable than upon the old line up the west bank, it being stated in this record that a locomotive which could only handle 900 tons over the old west-bank line can handle 2,000 tons over the new east-bank line.

While most freight for St. Louis by this new line crosses the river from the east to the west bank by ferry some miles below St. Louis, a considerable portion of it, especially at certain periods of the year, goes to East St. Louis and thence to St. Louis by bridge or by ferry.

The Cotton Belt road has no rails of its own into either St. Louis or East St. Louis, but it leases trackage rights over the east-bank line of the Iron Mountain from Thebes to East St. Louis.

It will be seen, therefore, that from the date of the opening of the east-bank line of the Iron Mountain in 1904, a considerable portion of this lumber traffic reached St. Louis through East St. Louis, while the balance of it reached East St. Louis, as formerly, through St. Louis. By this arrangement East St. Louis became an intermediate point with respect to a considerable amount of this business, and lumber dealers located at East St. Louis earnestly insisted that the maintenance of the higher rate there was in violation of the fourth section and an undue discrimination under the third section. These shippers had, previous to the filing of the tariffs attacked by the present proceeding, entered complaint with this Commission against the higher rate to East St. Louis.

The original adjustment of tariffs by which rates to St. Louis and East St. Louis differed according to the point of origin gradually disappeared. East St. Louis became an important commercial and industrial center. The two cities were in effect the same and carriers in recognition of this fact, gradually established the same rates to these two localities. By 1910 it had come to pass that rates upon nearly all commodities from nearly all directions, except certain nearby territory, were the same to St. Louis and to East St. Louis.

In view of these conditions the defendant carriers felt that they could not successfully defend the complaint brought by lumber dealers at East St. Louis. They believed that the time had come when these two markets must be put upon the same rate basis with respect to this lumber traffic and, for the purpose of doing this, they



filed these tariffs which are under consideration, by which the rate to St. Louis was advanced one cent and that to East St. Louis reduced one-half cent.

The defendants are right in their claim that the time had come when this change must be made; the complainants are also correct in their position that this would not of necessity justify an advance in the St. Louis rate. The consumption of lumber in East St. Louis is only about one-tenth as great as that in St. Louis, and if we assume that the carriers were receiving for their total service in bringing lumber to these two markets a sufficient amount before the advance, then clearly the present rates are excessive.

The question, therefore, is whether the carriers have shown that these advanced rates are under all the circumstances reasonable and nondiscriminatory. The rate upon yellow pine will be first considered.

This rate applies as a blanket from all yellow-pine producing territory west of the Mississippi River. The limits of this blanketed territory have been several times stated by the Commission in its previous reports and need not be again defined in detail here. Roughly speaking, it stretches north and south from about the middle of the state of Arkansas to the Gulf of Mexico and east and west some 300 to 350 miles from the Mississippi River. From all this territory the rate to St. Louis was 18 cents and is now 19 cents per 100 pounds.

The first pine brought to St. Louis was produced in the southern part of Missouri and the northern part of Arkansas, and the rate under which it moved from this nearby territory was 14 and 15 cents. As lumbering operations extended farther south, higher rates were imposed from the more distant points, so that previous to 1903 rates ranging from 14 to 22 cents were in effect. In 1903 a rate of 18 cents was applied to all this territory, thereby advancing nearby and reducing distant points. This rate of 18 cents was part of a general scheme of rates from this yellow-pine region which was approved by this Commission in *Chicago Lumber & Coal Co. v. T. S. E. Ry. Co.*, 16 I. C. C., 323.

The complainants urge that the approval by the Commission of these rates at that time, in view of its previous decisions with respect to similar rates from points of production east of the Mississippi River, amounted to a finding upon the part of the Commission that the rates approved ought not to be exceeded. They urge that the defendants must show such changes in circumstances and conditions between 1903, when these rates were established, and the present time as to justify a general advance at all points. This the defendants deny. They say that even though it were to be found that no general advance should at this time be made, nevertheless the 18-cent rate to St. Louis was, owing to the competitive conditions under which it was



established, abnormally low, and that if those conditions are to-day less forceful, so that some slight advance can be made, it should be permitted.

The defendants undertake to show as justifying some increase in this rate that the point at which this yellow pine is produced has moved farther to the south, so that the average haul to-day is greater than it was in 1903 and greater than when the above case was decided by the Commission.

The evidence upon this point suggests that the claim of the defendants may be correct. Railroad building for the last 10 years in this pine territory has been mostly in the south, and it is probable that the center of production has now moved somewhat in that direction. But it also appears that there is from these southerly points a very large movement of this yellow pine for export, and by water to New York and other eastern destinations, so that on the whole it is not by any means certain that the lumber actually brought into St. Louis under these rates is hauled farther to-day than it was when the 18-cent rate was established.

Both parties have devoted considerable attention to the inherent reasonableness of this rate of 19 cents. The defendants have determined what they call the center of production upon each system and have taken the average distance from this center of production to St. Louis, reaching a conclusion that the average distance by all lines would yield under the advanced rate a ton-mile revenue of less than 5 mills.

The complainants, upon the other hand, by attacking the method of the defendants and by introducing certain tables of their own, reach the conclusion that the average distance to St. Louis would be but 565 miles, yielding under the 18-cent rate a per-ton-mile revenue of 6.37 mills; under the 19-cent rate 6.72 mills.

Neither the method used by the defendants nor that of the complainants is strictly fair. The important fact would probably be the average haul by which this yellow pine actually moves from these points of production to St. Louis, and that information is not available. It does not seem necessary, however, to attempt to analyze the figures advanced upon this point, since they can not be controlling. Assuming that the complainants are correct, we are not prepared to find that earnings of slightly over 6½ mills per ton-mile for the transportation of this lumber a distance of 565 miles over the lines of these defendants under the circumstances in which it is transported would be excessive. Such earnings are lower than those received by these defendants for the handling of lumber from the same points of origin to many points of destination involving a similar haul.

That St. Louis occupies in reference to this lumber traffic a highly competitive situation is revealed by a glance at the map. Yellow

pine of substantially the same quality is produced all along the southern portion of the United States from Florida to the end of the pine belt in Texas. Lines of transportation from different parts of this territory converge at Cairo, Ill. Lumber from many parts of the south can reach the great consuming markets in central freight association and western trunk line territory through that gateway, and rates to most of this territory are made by combinations upon that gateway. As a result, rates from both the east and from the west to Cairo are lower than to other points for corresponding distances.

St. Louis is situated almost directly north of Cairo, upon the Mississippi River, and enjoys in a great degree the same competitive advantages of location. Points at which this yellow pine is produced both upon the east and upon the west of the Mississippi River are almost directly south of St. Louis, which they reach by strong lines of transportation. Competition between the eastern field and the western has been sharp at St. Louis as well as at Cairo.

Nothing can more strikingly show this competitive condition than the small differential which St. Louis has always taken above Cairo. While the distance by the short line is 152 miles, the rate has never exceeded the Cairo rate in the past by more than 2 cents per 100 pounds. The contention of the defendants that the 18-cent rate to St. Louis was the product of severe competition must be sustained.

By consulting the map it will be observed that St. Louis lies almost due north of the eastern boundary of the blanketed territory, while Kansas City is nearly due north of the western border. The distance by available lines of railway as well as the geographical distance is substantially the same from points of production in the eastern part of the blanket to St. Louis, and from points of production in the west to Kansas City. It has often been said before the Commission that these yellow-pine rates to Kansas City were highly competitive, and such is undoubtedly the case, and yet we find that when this St. Louis rate was advanced the Kansas City rate was 24 cents as compared with a rate of 18 cents to St. Louis.

Looking at this whole situation, we must conclude that the 18-cent rate to St. Louis was the result of extreme competition and that it was abnormally low in comparison with rates established by these defendant lines to points not as highly competitive. Considering the present rate of 19 cents in itself, we are unable to say that it is unreasonable for the service performed.

It does not conclusively follow, however, that because the 19-cent rate is reasonable the advance is therefore lawful. It often happens that two rates are so related to each other that to change one without a corresponding change in the other works an unjustifiable discrimination, and this seems to be the claim of the complainants here. It



is said that to advance the rate to St. Louis without a similar advance to Cairo gives to the latter market an undue advantage.

Most of the witnesses who testified upon the hearing are wholesale lumber dealers at St. Louis who bring lumber into that market and reship it to various other points. In this business they come into competition with wholesalers at Cairo. The cost of bringing lumber into St. Louis has been increased by 1 cent per 100 pounds, while the cost of shipping it out remains the same. At Cairo there has been no change in either the in or the out rates.

The defendants suggest that there is little economic reason for the existence of these wholesalers in the handling of lumber, but this is hardly true. These dealers at St. Louis purchase the entire cut of a small mill, bring it to their yards, combine it with the product of other small mills which differ in kind and in quality, manufacture some portions of it perhaps, and ship to the retail yard in the smaller town, or to the builder, assorted carloads of whatever kinds are needed. The mill which produces lumber upon a large scale and of various kinds may be able to make up this same sort of a carload and ship direct from the mill to the builder or the retail yard, but the smaller producer of lumber can not do this. The wholesaler is therefore of advantage in that he enables the smaller mill to exist and furnishes the country yard and the country builder with an assorted carload which it would often be impossible to obtain from any mill direct.

But while there is an economic reason why lumber should be shipped in carloads into St. Louis and again reshipped in carloads to the consuming point, it does not follow that the sum of the rates in and out should be the same as the through rate. As has been often pointed out by the Commission, an additional terminal service is involved in the two hauls which justifies an added charge.

It appears that at the present time St. Louis has, in a very extensive territory to the west and the northwest, an advantage over Cairo, and indeed over any other assembling point, in the handling of yellow pine lumber from the west of the Mississippi River. To the north in most territory that market stands upon an equality with Cairo; to the east and northeast Cairo has the advantage. But that advantage to-day is not as great as it has been for most of the time since rates of 16 cents to Cairo and 18 cents to St. Louis were established from this southwestern territory.

It will be remembered that formerly rates from St. Louis to eastern points were  $1\frac{1}{2}$  cents higher than from East St. Louis. About the year 1908 carriers leading from St. Louis to eastern points of consumption reduced lumber rates from that market by absorbing the bridge charge, which amounted to a reduction in the rate itself of  $1\frac{1}{2}$  cents per 100 pounds. At the time of this change no change



was made from Cairo, with the result that St. Louis could now enter these markets upon a rate better by  $1\frac{1}{2}$  cents than formerly. The advance of 1 cent to St. Louis without a corresponding advance to Cairo diminishes by that much the advantage which the St. Louis operator derived from the previous reduction, but he still has a rate  $\frac{1}{2}$  cent better in comparison with Cairo to all territory except that within a short distance of St. Louis than he enjoyed from 1903 down to 1908 and better, apparently, than he had ever enjoyed previous to 1908.

It often happens that where rates are made by the full combination upon one gateway, while through some other competing market they are less than the full combination, an advantage is given to the first market. The discrimination worked by this method of publishing tariffs is often a difficult one to deal with. It is possible that these present rates, which make on Cairo, may discriminate unduly against St. Louis. Our understanding is that the carriers which control that traffic—certainly from points east of the Mississippi River to and through Cairo—are not the same as those which control it to and through St. Louis, and that therefore these defendants can not be properly charged with the discrimination if it exists. But that question is not presented by this record and is not definitely passed upon at this time.

We hold upon the record before us that the rate of 19 cents to St. Louis is reasonable of itself and that it does not, so far as appears, unjustly discriminate against that market.

Rates on hardwood lumber were also advanced 1 cent per 100 pounds to St. Louis and reduced one-half cent per 100 pounds to East St. Louis. The defendants justify this advance upon the same general grounds which have already been dealt with in considering the yellow-pine rate.

These hardwood rates are not applied as blankets, but vary with distance. The points of production are much nearer to St. Louis, the distances ranging from 150 to 550 miles. The rates yield a revenue per ton-mile distinctly higher for the shorter distances than those upon yellow pine.

These advanced rates have been carefully compared with the rates applied by public authority in those states through which the lumber is transported and with rates established by this Commission in that territory for a similar service. They are without exception lower than the lumber rates of Missouri, lower than the so-called "court tariff" of Arkansas, and lower than the lumber tariff of the Corporation Commission of Oklahoma. They are lower than any lumber rates established by this Commission for the transportation of lumber for similar distances in that territory.

The complainants with much confidence refer to *East St. Louis Walnut Co. v. M. P. Ry. Co.*, 14 I. C. C., 553, and *East St. Louis Walnut Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 575, as furnishing an instance in which lower rates were established, but these cases, if rightfully considered, do not substantiate the position of the complainants. The 11½-cent rate established from Newport to St. Louis, upon the St. Louis, Iron Mountain & Southern, was agreed to by the carrier and approved by the Commission. The rates fixed upon the Chicago, Rock Island & Pacific were lower in proportion to distance than those established upon the Iron Mountain, and lower than the rates on lumber before us in this proceeding, but they were established largely in consideration of the fact that the Rock Island must handle this traffic over its circuitous route in competition with the Iron Mountain by the more direct route. The Commission called particular attention, moreover, in the latter case to the fact that the commodity to which the rates were applied was of an extremely low grade, the value of a carload being but about \$175.

We are of the opinion that it satisfactorily appears from the testimony offered by the defendants that the advanced rates upon hardwood lumber are just and reasonable and should not be disturbed.

The defendants have shown in considerable detail that upon certain of the lines mainly affected the expenses of operation in recent years have increased more rapidly than the gross earnings, thus working an actual reduction in net earnings, although the value of their property upon which such net earnings are to pay a return has been added to. While in determining whether these lumber rates to St. Louis and East St. Louis shall be equalized in a manner which will somewhat add to or somewhat subtract from the revenues of these carriers, we can not be entirely oblivious to the facts shown, nor to the further fact that, as found by this Commission in *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, railroads in this section have not prospered to the same degree as in some other parts of our country, still we do not base our decision upon these grounds, nor must that decision be taken as approving any general advance in lumber rates throughout this section.

The complaint will be dismissed.

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No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

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FOURTH SECTION APPLICATION No. 1952.

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*Submitted March 6, 1912. Decided June 4, 1912.*

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1. The complaint alleges that the freight rates in general to and from Bowling Green, Ky., are not established with proper relation to the rates to and from Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. By Fourth Section Application No. 1952 the Louisville & Nashville Railroad, for itself and its connections, seeks authority to continue to charge lower rates to and from Louisville, Clarksville, and Nashville than to and from Bowling Green. The defendants seek to justify this discrimination against Bowling Green on the ground that there is water competition at the other points which does not exist at Bowling Green and competition of rail carrier with rail carrier, intensified by market competition.
2. The Commission finds that the facts of record reveal a community of interest between the water and rail carriers serving Bowling Green, the effect of which is to deprive it of the benefit of water competition which it should enjoy under normal and natural conditions, and that under a situation such as disclosed in this proceeding, the rail carrier is estopped from justifying its discrimination against Bowling Green in favor of Louisville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them. It is evident to the Commission that were it not for the affiliation between the rail carrier and the water carrier there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville to justify relieving the Louisville & Nashville Railroad from the operation at Bowling Green of the long-and-short-haul clause of the act to regulate commerce.
3. The railroad competition at Louisville and Clarksville is not of sufficient force and effect to justify a lower scale of rates at those points than at Bowling Green on traffic the movement of which is through Bowling Green.
4. The fact that Nashville is recognized as a commercial center of more importance than Bowling Green and enjoys a far greater volume of trade does not warrant the continuance of a relation of rates between that point and Bowling Green which results in undue preference to the one and undue prejudice to the other. The law contemplates relatively fair rates as between different points, and one of its prime objects is to cure the practice of carriers, formerly so prevalent, of favoring one point over another when the favored point possesses no advantages over the other with respect to real competition either by water or rail.



5. The Commission is of the opinion that the defendants' rates to and from Bowling Green are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville.
6. The rate of 20 cents on sugar from New Orleans to Bowling Green does not bear an unreasonable relation to the rate of 17 cents to Louisville, and the defendants will be relieved from the operation of the fourth section of the act so far as this traffic is concerned.
7. The rates to Montgomery, Ala., from Bowling Green, as compared with the rates to Montgomery from Clarksville, are unjustly discriminatory, and for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery.
8. On oranges from Jacksonville, Fla., to Bowling Green the defendants are not entitled to apply a rate in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville.
9. The evidence respecting complainant's request for a double-deck car rate on hogs from Bowling Green to Chicago is not sufficient to enable the Commission to reach a conclusion in the matter. This item in the complaint can not be disposed of without going into the larger question of the use of double-deck cars as such.

*T. W. & R. C. P. Thomas* for complainant.

*W. A. Colston* for Louisville & Nashville Railroad Company.

*D. P. Connell* for Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; New York Central & Hudson River Railroad Company; and West Shore Railroad Company.

*G. E. Fulton* for Chicago-Ohio River lines.

#### REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

The issue in this proceeding is whether the freight rates in general to and from Bowling Green, Ky., are established with proper relation to the rates to and from Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. The complainant, a corporation composed of business men located at Bowling Green, by petition, filed August 16, 1911, submits a comparison of all class rates from Chicago, St. Louis, and New York to Bowling Green, Clarksville, and Nashville, the car-load rates on 31 commodities from points in New York, Pennsylvania, Ohio, Virginia, Michigan, Indiana, Missouri, Massachusetts, Illinois, and Maine to the same destinations; the rate on sugar from New Orleans, La., to Bowling Green and Louisville, Ky., and on oranges from Jacksonville, Fla., to the latter points. On outbound traffic the complaint compares the rates from Bowling Green with those from Nashville on cattle and hogs to Chicago, on eggs and dressed poultry to New York, on tobacco to Cincinnati, Evansville, Louisville, and Memphis, and on all classes, 1 to F, inclusive, from Bowling Green, Nashville, Evansville, and Louisville to Atlanta, Montgomery, and Jackson.

These comparisons show that the rates to and from Bowling Green are higher than the rates to and from the other points mentioned, and the petitioner alleges that they are "unduly prejudicial to the interests of the city of Bowling Green and unduly preferential to the interests of the cities of Clarksville and Nashville, Tenn., and Louisville, Ky., and are in violation of section 3 of the act to regulate commerce"; also that such rates constitute "in a majority of instances greater charges for the shorter distance to or from Bowling Green, Ky., than for the longer distance to or from Clarksville and Nashville, Tenn., and Louisville, Ky., such shorter distance being included within the longer distance and being over the same line and in the same direction, said greater charges to or from Bowling Green being in violation of section 4 of the act to regulate commerce as amended June 18, 1910." The complaint seeks an order establishing for the future just and reasonable rates to and from Bowling Green as related to Nashville, Clarksville, Louisville, and Evansville.

The defendants, which are the various carriers engaged in the transportation of passengers and property by rail and rail and water from and to the points in question, deny the alleged violations of the act and contend that the circumstances and conditions surrounding the movement of traffic to and from Bowling Green as compared with the other points named differ to an extent sufficient to justify the higher scale of rates to and from Bowling Green.

Bowling Green is the county seat of Warren County, Ky., and is located on the main line of the Louisville & Nashville Railroad, 114 miles south of Louisville, 73 miles north of Nashville, and 64 miles northeast of Clarksville. It is situated at the head of navigation on Barren River, which empties into the Green River at Woodbury; the Green, in turn, emptying into the Ohio River at a point near Evansville. According to the United States census of 1910, the population of Bowling Green was at that time 9,173, while the population of Clarksville was 8,548 and Nashville 110,364. Nashville is also located on the main line of the Louisville & Nashville Railroad, as well as on the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad. Clarksville is 63 miles northwest of Nashville and is on the Memphis Branch of the Louisville & Nashville Railroad and on the Tennessee Central Railroad. Nashville and Clarksville are both situated on the Cumberland River, which flows into the Ohio River at a point above Paducah, Ky. From Evansville by water the distance to Bowling Green is about 190 miles, to Clarksville 285 miles, and to Nashville 350 miles. To the mouth of the Cumberland River from Clarksville the distance is about 143 miles and from Nashville about 210 miles.

By reason of its location, Bowling Green is intermediate to Clarksville and Nashville on traffic moving via the line of the principal



defendant, the Louisville & Nashville Railroad, from or to the east or north to or from the latter points. It is likewise intermediate to Louisville on traffic moving to that point via the main line of the Louisville & Nashville Railroad from or to the south or southwest. The question of primary concern, therefore, is whether the facts developed in this proceeding are such as to justify the Commission in relieving the defendants from the operation of the long-and-short-haul clause of the law so far as the rates to and from Bowling Green are concerned.

By Fourth Section Application No. 1952, filed December 17, 1910, the defendant Louisville & Nashville Railroad, for itself and its connections, seeks authority to continue to charge lower rates to and from Louisville, Clarksville, and Nashville than to and from Bowling Green. While the application seeks similar authority with respect to many other points, only this portion of it will be considered in the present proceeding and no opinion with respect to points other than Bowling Green will be expressed herein.

The present all-rail class rates from New York City to Bowling Green, governed by the southern classification, are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H
Rate.....	130	112	92	72	62	55	55	55	45	40	60	65

Following are the rail-and-water rates from New York City to Clarksville (depot delivery) and to Nashville, governed by official classification:

Class.....	1	2	3	4	5	6
To Clarksville (depot delivery).....	91	80	64	46	40	36
To Nashville.....	91	78	60	42	36	31

To Nashville the rail-and-water and the all-rail rates are the same, while to Clarksville the all-rail rates are higher than the rail-and-water rates, said all-rail rates governed by official classification being as follows:

Class.....	1	2	3	4	5	6
Rate.....	101	88	70	50	44	39

Differences in favor of Nashville and Clarksville that are similar to the foregoing are shown in some of the commodity rates. For instance, the rate on eggs from Bowling Green to New York in carloads is 94 cents, minimum 10,000 pounds, and on poultry, dressed, \$1.12, minimum 20,000 pounds; from Nashville to New York the rate on eggs is 78½ cents in any quantity, while on dressed poultry the rate is 88 cents in any quantity. On butter from Nashville to Louisville the rate is 28 cents a. q., while from Bowling Green to Louisville the rate is 55 cents a. q. On eggs from Nashville to Louisville the rate is 24 cents a. q., from Bowling Green to Louisville it is 47 cents a. q.,



and from Bowling Green to Nashville 39 cents a. q. From New Orleans to Louisville and Nashville the rate on sugar in carloads is 17 cents, minimum 33,000 pounds, and to Bowling Green 20 cents, minimum 24,000 pounds. On nails from Pittsburgh to Bowling Green the rate is 35½ cents, minimum 36,000 pounds, as against 28 cents, same minimum, to Nashville.

The defendants seek to justify this discrimination against Bowling Green on the ground that there is water competition at Nashville, Clarksville, Louisville, and Evansville which does not exist at Bowling Green, and competition of rail carrier with rail carrier, intensified by market competition. They argue that the rates complained of are reasonable in and of themselves, while the rates to the favored points are not lower than it is necessary that they should be in order to meet the competition existing there.

It appears from the mass of testimony submitted that from 1841 to the present time the Green and Barren Rivers from Bowling Green to the Ohio River have been used for the purposes of navigation. In that year the original system of slack-water navigation on these rivers, including four locks in Green River and one lock in Barren River, with a total length of pools of approximately 200 miles, was completed by the state of Kentucky. The state retained control and management of the system until 1868, when it was leased to the Green & Barren River Navigation Company for a term of 30 years.

The act of the Kentucky legislature, approved February 20, 1886, ceded the entire system to the United States upon condition that the unexpired portion of the lease to the navigation company be purchased by the United States. The rivers and harbors act of August 11, 1888, appropriated \$135,000 "for the purchase of the improvements known as the Green and Barren River improvements." This purchase was consummated on December 11, 1888, and the government assumed control of the rivers, the improvements therein, and the property formerly owned by the state. During the 21 years from 1889 to 1909, inclusive, the federal government expended in the interest of the navigation of these rivers the sum of \$1,715,905.76. Complainant confidently asserts that as a result of these expenditures "there exists upon Green and Barren rivers to-day, both as to efficiency and continuity, a system of slack-water navigation unsurpassed by any river or system of rivers in the United States." In the annual report of the chief of engineers for the United States army for 1910, it is stated that boats up to 35 feet in width, 138 feet in length, and draft of 5 feet may navigate from Bowling Green to the Ohio River.

Unlike the Cumberland River, which creates the water competition at Nashville and Clarksville, the Green and Barren rivers are open

all the year and may be plied continuously by vessels. This is accounted for, testified the president of complainant association, by the fact that the headwaters of the Green River drain 6,000 square miles of cave territory—

the only territory like it in the world, of any size, and that the streams have a temperature of 54 degrees the year round, that with the great depth of the river 150 miles up the stream, which runs from 20 to 30 feet deep, and 60 feet in some places, gives a large body of water that is very difficult to freeze, so much so that boats come from the south—a very unusual thing to do, at first sight—to harbor into the mouth of Green River. That is a well known fact, that they come out of the Cumberland and Tennessee up here, and when the Cumberland and Tennessee are frozen Green River is open. There is no other river like it that I know of on the globe.

The navigability of the Cumberland River has been previously discussed by the Commission, *Chamber of Commerce of Chattanooga v. S. Ry. Co.*, 10 I. C. C., 111, decided March 12, 1904. Since that time it has been determined by the federal government that the system of locks and dams of the upper river must be extended considerably in order to make the river below Nashville more available for navigation. With respect to this matter the annual report for 1910 of the chief of engineers for the United States army states that the rivers and harbors act of June, 1910, modified the old project of canalization, under which lock A has already been placed in operation, by providing for the completion of the scheme—

By the construction of 5 additional locks, beginning with lock B, about 51.5 miles below Nashville and ending with lock F about 147 miles below Nashville, thus reducing the total number of locks from 7 to 6. The proposed locks are to be 52 feet wide and 280 feet long, with lifts varying from 10 to 13.1 feet. It also includes dredging the rest of the river to the mouth (about 46 miles) to a depth of 6 feet at low water, the total estimated cost of the additional improvements being \$3,164,882.40.

This report of the chief of engineers further states that—

the Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over 3 feet from six to eight months and for boats drawing 16 inches or less, the whole year. General navigation, however, is practically closed for several months each year during low water.

The record contains no definite testimony as to the cost of transportation on the Cumberland River as compared with the Green and Barren rivers. While the boats operating on the Cumberland are doubtless of greater capacity than the boats operating on the Green and Barren rivers, this advantage is probably offset by the fact that navigation on the latter rivers is continuous. A river captain of many years' experience in the steamboat business on the Green and Barren rivers testified that he spent one year operating a boat on the Cumberland River between Nashville and Evansville and that he made one round trip a week, and in his opinion freight could be carried "as cheap or cheaper" by boats on the Green and



Barren rivers than on the Cumberland. He further stated that the fuel coal used by the Cumberland River steamboats comes from the lower Green River. Between Bowling Green and Evansville the boats regularly in operation make two round trips a week.

From the facts before the Commission regarding these three rivers it seems fair to conclude that the potential competition on the Green and Barren rivers is as great as on the Cumberland River.

The actual movement of freight on these rivers is now a great deal less than it was formerly. It was testified that on the Green and Barren rivers in 1884 the total amount of freight delivered by the river at Bowling Green was 75,000 tons, as against 27,188 tons in 1910. It is conceded that the competition existing on the three rivers is now largely potential. As to the Cumberland River defendants explain that—

Its active competition could be revived at any time, within a reasonable period, of course, should there be any marked or great increase in freight rates by rail.

There appears to be no doubt that the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates. In *Chamber of Commerce of Chattanooga v. S. Ry. Co., supra*, the Commission said:

Before the rail lines were extended to Nashville, traffic from eastern seaboard cities came by the Pennsylvania Railroad to Pittsburgh and thence by the Ohio and Cumberland rivers to Nashville. When the Nashville, Chattanooga & St. Louis road was opened between Chattanooga and Nashville, which was prior to the completion of the Louisville & Nashville road from Cincinnati and Evansville to Nashville, the competition it met on traffic from the east to Nashville was that via the Cumberland and Ohio rivers; and when the Louisville & Nashville road was subsequently constructed from Cincinnati to Nashville, the evidence shows that the competition of the Cumberland and Ohio rivers was "transferred" to that road, and that the Nashville, Chattanooga & St. Louis road had then to meet the rates of the Louisville & Nashville road thus influenced by Cumberland and Ohio river competition.

The complainants contend that—

the reason why the river has not been a potential influence in affecting the freight rates to Bowling Green since the river was made free by the United States government is because the Louisville & Nashville Railroad Company through the Evansville & Bowling Green Packet Company has frustrated the competition.

Replying to this charge the defendants in their brief say:

The flimsiness and absurdity of the claim that the Louisville & Nashville Railroad Company controls the transportation on the Green and Barren rivers is shown by complainants' own arguments, etc.

In substantiation of the complainants' allegation these facts are shown of record:

Shortly after the federal government acquired the Green and Barren rivers, the Evansville & Bowling Green Packet Company was organized and since then has operated two steamboats that carry



passengers and freight between Bowling Green and Evansville, each making two round trips a week between these points. For many years past this has been the only line operating regularly on the rivers. The president of the packet company was also division general freight agent of the Louisville & Nashville Railroad at Evansville and still holds both positions. Throughout this period, according to the testimony of several witnesses, all of whom are shippers located at Bowling Green, neither the agent of the packet company nor the agent of the Louisville & Nashville Railroad Company at Bowling Green solicited any shipments except in 1901.

The veteran steamboat captain previously referred to stated that he was employed for two years as agent of the packet company at Bowling Green and during his service received instructions not to solicit inbound freight against the Louisville & Nashville Railroad other than that originating at Evansville, nor outbound freight other than that destined to Evansville. He said that before he received his instructions he contracted with a shipper at Franklin, 20 miles from Bowling Green, to ship a large quantity of tobacco to Louisville, but was later directed by his company not to carry out the contract, although the rate agreed upon had been fixed after a conference which included the president of the packet company and a representative of the Louisville & Nashville Railroad Company, who is now its freight traffic manager.

In 1901 the merchants and shippers of Bowling Green purchased the steamship *Sun* to operate in Green and Barren rivers as an independent boat. It is agreed that the purpose of this action was to compel, by actual water competition, the publication of lower rates by the Louisville & Nashville Railroad. The *Sun* commenced operations under lower freight rates than were charged by the packet company. The record shows that immediately thereafter both the Louisville & Nashville Railroad and the packet company reduced their rates. It is undisputed that the packet company offered, and actually hauled, freight for nothing, with a free pass to the shipper as a bonus, while the reduction in the rail carrier's rates was very material. As stated in complainants' brief—

The temptation for immediate advantage was too strong for the general public as well as for a few of the merchants who had agreed to patronize the *Sun*. The railroad and line of boats which were hauling freight at almost any price got the business, and the steamer *Sun* after 8 or 10 months, was tied to the bank.

A wholesale merchant at Bowling Green testified that he was informed by a stockholder of the packet company, shortly after the *Sun* ceased operations, that the railroad company did not own the packet company, but it guaranteed the packet company against loss in making the fight on the *Sun*. Since this encounter in 1901 no

independent vessel has ventured to enter the trade against the boats of the Evansville & Bowling Green Packet Company on the Green and Barren rivers for traffic from Bowling Green to Evansville or from Evansville to Bowling Green.

On January 30, 1907, a committee representing the complainant association conferred with the general freight agent of the Louisville & Nashville Railroad at Louisville with reference to the rate situation at Bowling Green. At the hearing of this case the counsel for complainant requested this official, who testified for defendant, to submit in evidence any letter that he may have written to the president of the packet company following the aforesaid conference. The counsel for defendant opposed this request, and after some little discussion it was agreed that if such a letter could be found a copy would be furnished for the information of the Commission. Subsequently the letter in question was located and transmitted to the Commission. Its bearing upon the charge that the Louisville & Nashville Railroad Company influences the rates of the packet company is direct, and we feel that it should, therefore, be incorporated in this report. The letter and reply thereto are as follows:

(Copy.)

Fox.

LOUISVILLE & NASHVILLE RAILROAD CO.,  
*Louisville, Ky., January 31, 1907.*

CAPT. LEE HOWELL,  
*President E. & B. G. Pkt. Co., Evansville, Ind.*

#### BOWLING GREEN, KY., RATES.

DEAR SIR: I had a conference at Louisville yesterday with a committee representing the Bowling Green Business Men's Protective Association, concerning the existing rates from the Ohio River and St. Louis to Bowling Green. As a result of that conference we agreed to make a few changes in the existing rates, which I mention below:

*Sirup and molasses, c. l.*—Our present rail rates are made on regular basis, as compared with commodity rate of 15 cents per hundred pounds by boat, Evansville to Bowling Green. The sirup which is actually shipped all moves in cans from St. Louis, and it was stated that the boats have been charging  $12\frac{1}{2}$  cents from Evansville to Bowling Green, that is to say, the tariff rate on canned goods. I think it is more than likely this statement is altogether correct. I do not mention it with any purpose of charging the boat line with bad faith. The mistake is not unnatural at all and is readily accounted for. Considering the conditions existing at Bowling Green just now I did not believe it wise to suggest that your boats had better handle this business hereafter at 15 cents, but let it stay at  $12\frac{1}{2}$  cents, but it was arranged that we would reduce our rail rate, basing it upon a rate of  $12\frac{1}{2}$  cents, Evansville to Bowling Green.

*Woven wire fencing.*—We are carrying at this time rate of 25 cents per hundred pounds Louisville to Bowling Green on woven wire fencing, carloads; also a rate of 20 cents per hundred pounds Louisville to Bowling Green on barbed wire, carloads. I do not believe this difference is justifiable, and, as a matter of fact, the woven wire fencing is better freight and no more valuable than barbed wire. Therefore advised

24 I. C. C.



the committee that we would make the rate from Louisville to Bowling Green on woven wire fencing, c. l., 20 cents, or the same as on barbed wire, c. l.

*Vinegar, c. l.*—Your present rate by boat Evansville to Bowling Green, I believe, is 15 cents, though you carry a commodity rate of  $12\frac{1}{2}$  cents on groceries n. o. s., carloads. I understand there is actually no movement from Evansville to Bowling Green by boat, nor is there likely to be any. I thought, therefore, we would base our rate as upon a commodity rate of  $12\frac{1}{2}$  cents by boat from Evansville, making  $17\frac{1}{2}$  cents by rail from Louisville. I trust this will be satisfactory to you.

Yours truly,

(Signed)     D. M. GOODWYN,  
General Freight Agent.

EVANSVILLE & BOWLING GREEN PACKET CO.

[63060

EVANSVILLE, IND., Feb. 11, 1907.

Mr. D. M. GOODWYN,  
G. F. A., L. & N. R. R. Co.,  
Louisville, Ky.

BOWLING GREEN, KY., RATES.

DEAR SIR: I have your favor of January 31st—Fox, and have noted the rates you propose to establish to Bowling Green, Ky.

I have no objection to the rates you propose to establish to Bowling Green.

Yours truly,

(Signed)     LEE HOWELL, President.

The conclusion is inevitable, from a review of the facts concerning the alleged relation between the packet company and the Louisville & Nashville Railroad, that the rail carrier has had and apparently still retains a dominating influence over the water carrier with respect to the making of rates on traffic in which the rail carrier may be interested. The defendants' argument that it fairly meets the competition which exists at Bowling Green loses its force when we consider that such competition is purely artificial and that defendants' own action has removed the element of real competition which presumably otherwise would exist. We believe the record reveals a community of interest between the water and the rail carriers, the effect of which is to deprive Bowling Green of the benefit of water competition, which it should enjoy under normal and natural conditions, and that under a situation such as this the rail carrier is estopped from justifying its discrimination against Bowling Green in favor of Nashville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them. In the case of *Interstate Commerce Commission v. L. & N. R. R. Co.*, 190 U. S., 273, the United States Supreme Court, speaking through Mr. Justice White, now Chief Justice, said:

What the fourth section of the act to regulate commerce has reference to is an actual dissimilarity of circumstances and conditions; not a conjectural one. Of course, if by agreements or combinations among carriers it were found that at a particular point



rates were unduly influenced by a suppression of competition, that fact would be proper to consider in determining the question of undue discrimination and the reasonableness *per se* of the rates at such possible competitive points.

It is evident to the Commission that were it not for the relation of the rail carrier to the water carrier there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville to justify relieving the defendant from the operation at Bowling Green of the long-and-short-haul clause of the act.

Turning now to defendants' claim that there exists at Nashville and Clarksville railroad competition that does not prevail at Bowling Green, the record shows that the Tennessee Central Railroad was completed in 1903 and its entry into Nashville and Clarksville had no influence upon the rates at such points. The general freight agent of the Louisville & Nashville Railroad testified that the present rates have remained unchanged throughout the period beginning prior to the construction of the Tennessee Central, and admitted that the City of Nashville, "got stuck" when it contributed a million dollars to secure this additional rail carrier. The termini of this road are Emory Gap and Harriman, Tenn., on the east, and Hopkinsville, Ky., on the west. It was formerly leased by the Illinois Central and Southern railways, but is now independent.

Except for the Nashville, Chattanooga & St. Louis Railway at Nashville, no rail carriers other than the Tennessee Central and the Louisville & Nashville reach Clarksville and Nashville. The general freight agent of the Louisville & Nashville Railroad asserted that "we have no stronger competition, if as strong, as the Nashville & Chattanooga Railway," but it is a fact that for many years the Louisville & Nashville Railroad has owned the majority of the stock of the Nashville, Chattanooga & St. Louis Railway. According to the report made by the Louisville & Nashville Railroad to the Commission for the year 1911, the stock so owned amounted to 71 per cent. In *Chamber of Commerce of Chattanooga v. S. Ry. Co., supra*, the Commission said:

The Louisville & Nashville road, by virtue of its ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway, can name the entire board of directors and has the power to control the operations of the latter road. If competition of the Nashville, Chattanooga & St. Louis Railroad Company on traffic from the east to Nashville should for any reason become objectionable to the Louisville & Nashville road, it possesses the power to control or put an end to that competition.

In discussing this phase of the same case, in *Interstate Commerce Commission v. E. T., V. & G. Ry. Co.*, 85 Fed., 116, the federal court for the eastern district of Tennessee said:

But it appears that that company (L. & N. R. R.) owns and controls a majority of the stock of the Nashville, Chattanooga & St. Louis Railroad Company, the respond-

ent carrier, which constitutes that part of the through lines which extends from Chattanooga to Nashville and fixes the rates for that road. It is therefore in a position to insure to Nashville such concessions as to advance its favoring purpose with reference to that city. It really has no competition there unless it be from the navigation of the Cumberland River.

And Judge Taft, when on the circuit court of appeals, said, in referring to the same matter, 99 Fed., 63:

We know that it is stipulated in the record that the officers of the Nashville, Chattanooga & St. Louis Railroad Company would testify that it competes with the Louisville & Nashville Railroad Company, and that they are under different managements; but such evidence must be weighed in the light of the history of railroads in this country and the motives that ordinarily govern in railroad management. One railroad company acquires the controlling interest in another company to control its general policy, and while it may permit independence in the personnel and the details of management, it needs more than a stipulated statement of this general nature to induce a belief that the company which elects the directors of the other will permit that other to take a course materially detrimental to the interests of the owning company.

We are convinced from our consideration of the facts developed in connection with defendants' claim of railroad competition at Nashville and Clarksville that this competition is not of such force and effect as to justify a lower scale of rates at these points than at Bowling Green on traffic the movement of which is through Bowling Green.

The defendants lay much stress on the fact that Nashville is a commercial center of importance and that the volume of trade there far surpasses that of Bowling Green. It is conceded that this is not due to the influence of the railroads, as Nashville was a receiving and distributing point for traffic when the rail carriers reached it. But the fact that it is recognized as a trade center does not warrant the continuance of a relation of rates between that point and Bowling Green which results in undue preference to the one and undue prejudice to the other. The law contemplates relatively fair rates as between different points, and one of its prime objects is to cure the practice of carriers, formerly so prevalent, of favoring one point over another when the favored point possesses no advantages over the other with respect to real competition either by water or rail.

Having given due consideration to all the facts of record in this proceeding, we are of the opinion that the defendants' rates to and from Bowling Green, Ky., are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville, Tenn., and that for the future the defendants should not be relieved from the operation of the fourth section of the act with regard to the rates to and from these points.



The complainant, in its brief, urges the establishment of class rates to Bowling Green that will be the average of the class rates to Louisville and to Nashville. This would provide rates ranging from 3 to 8 cents lower than at Nashville, but there is nothing in the record to show that the Nashville basis would be unreasonable as applied at Bowling Green.

We shall refrain from any discussion of the rates from Chicago and the west, referred to in the complaint, in view of the following statements in complainant's brief:

The rates from Chicago and the west to points in southeastern territory are made with relation to the rates from the east and, therefore, we think it is sufficient to establish our case with reference to the rates from New York to Bowling Green and allow the rates from Chicago and St. Louis to Bowling Green to be adjusted in relation thereto just as is done at various other southern points.

The rate of 17 cents per 100 pounds on sugar from New Orleans, La., to Louisville, which complainant seeks to have applied to Bowling Green, affords a revenue per ton-mile of slightly under 4.2 mills for a haul of 811 miles. The present rate to Bowling Green is 20 cents. It is the contention of defendant Louisville & Nashville Railroad that these rates are low and were established for the specific purpose of meeting competition by water from New Orleans. It is undoubtedly true that in the past actual water competition influenced these rates. In *Payne-Gardner Co., v. L. & N. R. R. Co.*, 13 I. C. C., 638, decided June 8, 1908, the Commission stated that the competition of steamboats operating on the Ohio and Mississippi rivers has affected the Louisville rate on sugar from New Orleans, although there has been no movement of sugar by water to Louisville in recent years. The brief for complainant, on page 18, says:

The rate upon sugar from New Orleans to Bowling Green a few years ago was 35 cents, said rate being reduced to 30 cents, then to 25 cents, and then to 20 cents, where it has remained. As testified by Mr. H. D. Graham and admitted by Mr. Goodwyn, this result was brought about because sugar was shipped to Evansville from both New Orleans and the east by rail, and then brought by boats in carload lots from Evansville to Bowling Green.

We believe from the facts before us that the water competition of the Ohio and Mississippi rivers is reflected in the present rate of 17 cents to Louisville and that the rate of 20 cents to Bowling Green does not bear an unreasonable relation to the Louisville rate. Under the circumstances the defendants will be relieved from the operation of the fourth section of the act so far as this traffic from New Orleans to these points is concerned.

The complainant alleges that to withhold from Bowling Green at this time the benefit of rates to the south, southeast, and southwest, adjusted in relation to the rates from Louisville and Nashville, is



unduly prejudicial to Bowling Green. The present rates from Bowling Green to Montgomery, Ala., are as follows:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate....	102	85	66	61	56	52	46	49	30	24	52	47	60

From Nashville the rates are:

Rate....	63	57	53	40	32	28	20	26	19	15	29	25	30
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And from Clarksville:

Rate....	76	70	66	48	40	34	26	32	25	21	37	33	41
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It is contended that since the distance from Clarksville to Nashville is 64 miles and from Bowling Green to Nashville, 72 miles, it would seem that Bowling Green is at least entitled in this adjustment of rates to Montgomery to the same rates as Clarksville. In its brief, complainant says:

Jackson, Miss., Atlanta, Ga., and other points in the southeast should, of course, bear some relation to the rates to Montgomery. If the rates be adjusted from Bowling Green to Montgomery, as suggested, they would consist with rates from Clarksville, which the railroad has voluntarily established, and such reductions as may be accorded Bowling Green in its inbound rates will thereby be made of real use and availability.

At the hearing the general freight agent of the Louisville & Nashville Railroad Company stated that if there were any need of out-bound rates on commodities produced or manufactured at Bowling Green, his company would put in such rates not higher than Louisville rates. No comparison is given of the commodity rates to Montgomery from Louisville and from Clarksville, but the following table of class rates from Louisville shows a basis considerably higher than from Clarksville:

Class....	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate.....	98	87	78	62	50	41	28	34	26	22	44	39	44

Despite this defendant's willingness to give Bowling Green commodity rates not higher than Louisville rates, it argues that—

The reasons for the lower rates from Louisville, Evansville, and Nashville to this territory are to be found in the fact that there exists from Louisville, Evansville, and Nashville, competition either by water, on the one hand, or between carriers and markets, on the other, which does not exist at Bowling Green.

It does not argue, however, that these reasons exist at Clarksville, nor does it show that there is any dissimilarity of circumstances and conditions surrounding the transportation to Montgomery from Clarksville and Bowling Green. Traffic moving via the Louisville & Nashville Railroad from Clarksville and Bowling Green to Montgomery passes through Nashville, the distance from Bowling Green being 8 miles greater than from Clarksville. The movement from Bowling Green to Nashville is over the main line of the Louisville & Nashville Railroad, while from Clarksville to Nashville the movement is

over branch lines via Guthrie and Anqui. There is no competing rail route either from Clarksville or Bowling Green. The rates from Clarksville to Montgomery are fixed with relation to the rates from Nashville, and no reason has been advanced that justifies defendant's failure to adopt the same course with respect to the rates from Bowling Green.

We are of the opinion and find that defendant's rates to Montgomery, Ala., from Bowling Green, Ky., as compared with its rates to Montgomery from Clarksville, Tenn., are unjustly discriminatory and subject the locality of Bowling Green to undue and unreasonable prejudice and disadvantage; and that for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery.

On oranges to Bowling Green from Jacksonville, Fla., complainant seeks a rate not higher than the rate to Louisville, and attacks the present rate to Bowling Green as being unreasonable and unjust. Following is a statement of the rates in cents per standard crate of 80 pounds (minimum on carloads 300 standard boxes or crates):

To—	From Jacksonville, Fla. (proper).		From Jacksonville, Fla. (when from beyond).	
	C. L.	L. C. L.	C. L.	L. C. L.
Louisville, Ky. ....	49	73	46	70
Nashville, Tenn. ....	45	63	42	60

The rates to Bowling Green are made by adding to the Nashville rate differentials of 19 cents in carloads and 24 cents in less than carloads.

This results in rates to Bowling Green per crate that exceed the Louisville rates by 15 cents in carloads, and 14 cents in less than carloads. The defendants assert that the conditions existing at Louisville, from a competitive standpoint, are not the same as those existing at Bowling Green, but they only specifically refer to competition at Louisville with the California and imported oranges.

It is true that there is no rail competition in the transportation of oranges to Bowling Green, while between Jacksonville and Louisville the lines of the Southern Railway form a through competing route via the Louisville & Nashville Railroad and connections. This competing route, however, is only 4 per cent shorter than the route through Bowling Green, a difference which is negligible in a haul of such length. The rates on the short line do not accord with the provisions of the fourth section. The longer route is neither markedly circuitous nor is it placed at a decided disadvantage as

compared with its competitor. We are of the opinion therefore that the defendants are not entitled to apply at Bowling Green a rate on oranges from Jacksonville that is in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville.

The evidence respecting complainant's request for a double-deck car rate on hogs from Bowling Green to Chicago is not sufficient to enable the Commission to reach a conclusion in the matter. This item in the present complaint can not be disposed of without going into the larger question of the use of double-deck cars as such. Complainant also asked for the elimination of a charge of \$2 per car which it alleged was added to the rate on cattle and hogs from Bowling Green to Chicago, but not to the rate from Nashville. The general freight agent of the Louisville & Nashville Railroad testified that there is no additional charge, and the answer of the defendant explains the inaccuracy of the allegation.

Orders will be issued in accordance with the conclusions herein expressed.

24 L. C. C.



No. 4274.  
NEW PITTSBURGH COAL COMPANY  
v.  
HOCKING VALLEY RAILWAY COMPANY.

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No. 4275. -  
SAME  
v.  
SAME.

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*Submitted May 15, 1912. Decided June 6, 1912.*

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1. Rate of 75 cents per net ton for the transportation of lake-cargo coal in carloads from the Hocking district of Ohio to the docks at Toledo, Ohio, when for transshipment by vessel to points without the state of Ohio, not found to be unreasonable.
2. From the facts of record, the Commission is without jurisdiction over the transportation of vessel-fuel coal from points within the state of Ohio to a port of that state, the rail carriage not going outside of the state and the ultimate delivery of the coal being made to the vessel at the dock.

*Charles M. Johnston, E. C. Morton, and R. J. Odell for complainant.  
Wilson & Rector for defendant.*

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

These two proceedings, which have been consolidated, bring in issue the freight rates charged by the defendant for the transportation of bituminous coal in carloads from the Hocking district in southern Ohio to the docks at Toledo, Ohio. In No. 4274, filed July 29, 1911, the complainant attacks the rate on "lake-cargo coal," which is coal intended for transshipment by vessel to the ports on the great lakes without the state of Ohio, and in No. 4275, filed on the same day, the rate on "vessel-fuel coal" is assailed. The petitioner is an Ohio corporation, engaged in the Hocking district in mining and shipping coal.

The defendant moved to dismiss the complaint in No. 4275 on the ground that the transportation is entirely within the state of Ohio and therefore beyond the jurisdiction of the Commission. It appears that the rail transportation on both the vessel-fuel coal and the lake-cargo coal is altogether within the state, and that the

distinction between the two complaints is that the lake-cargo coal is intended for through shipment from point of origin to point of ultimate destination, whereas the vessel-fuel coal reaches its ultimate destination when it is loaded into the vessel's bunkers at the dock at Toledo. It is stated by the defendant that the vessel-fuel coal is—

Loaded on the cars at the mines and generally is consigned directly to Toledo at the local Toledo rate. It is frequently taken from lake-coal stock, on which the billing is corrected. In other words, it is taken out of the cargo entirely and restored to the local Toledo rate when once it is designated by the coal shipper as vessel-fuel coal. It is delivered to the vessel and put in the bunkers. \* \* \* Immediately after the car is placed it is used as the property of the vessel owner in the fires under the boilers in the vessels. Some of it is probably brought back to Toledo on the return trip of the vessel. In every instance it becomes the property of the vessel at the Toledo dock. \* \* \* The coal is shipped from Nelsonville, Ohio, and its destination is Toledo, Ohio.

There seems to be no dispute between the parties as to these facts. We think we have no jurisdiction over the transportation of this vessel-fuel coal from a point within the state of Ohio to a port of that state, the rail carriage not going outside of the state and the ultimate delivery being made to the vessel at the dock. It follows, therefore, that the complaint in No. 4275 must be dismissed.

The lake-cargo-coal rate involved in No. 4274 was, at the time the petition was filed, 90 cents per net ton. Effective May 26, 1912, it was reduced to 80 cents. This rate, as well as the rate previously in effect, includes the charge of 5 cents for transferring and reloading the coal on board the vessels, so that the present rate for the line haul is 75 cents. The complaint is directed primarily to the rate for the transportation service proper, and therefore this terminal charge of 5 cents will not be discussed. The complainant alleged that the transportation charge of 85 cents was unreasonable and unjustly discriminatory and in its brief contends that the present transportation charge of 75 cents is characterized by the same elements of excessive profit to the carrier. It charges intercorporate relationship between the defendant and certain connecting lines and avers that the rates for the transportation of bituminous coal to the markets of the north and northwest, and especially the lake-coal rates, have been fixed from year to year by the concerted action of competing carriers serving competing districts. This procedure, it asserts, has resulted in the publication of rates that unduly discriminate against the Hocking, eastern Ohio, and Pittsburgh districts in favor of the West Virginia and Kentucky districts. By a supplemental petition, filed January 10, 1912, the complainant asks reparation in the sum of \$392,420.48 on 780,160 tons of coal transported during the years 1910 and 1911. This claim is based upon a rate of 56 cents, which the petitioner claims is all that the defendant is

entitled to receive for the service performed in moving the shipments in question.

What is known as the Hocking coal field extends over portions of Hocking, Vinton, Athens, Morgan, and Perry counties in southern Ohio. From the mines in this field lake coal shipped via the defendant's rails is assembled at Nelsonville, the average distance from the mines to the assembling yard being 7.7 miles. From Nelsonville to the docks at Toledo is a distance of 184.8 miles, and the average unweighted distance from the mine tipples in the Hocking district to the docks at Toledo is 192.5 miles. The mines in this district served by the defendant are principally located on the Hocking division and on the branches and the mine tracks diverging from that division.

The lake-coal rates from the eastern Ohio, or Pittsburgh vein No. 8, the Pittsburgh, Pa., and the West Virginia districts have been passed upon by the Commission in the following cases, respectively: *Pittsburgh Vein Operators Asso. of Ohio v. Pennsylvania Co.*, 24 I. C. C., 280; *Boileau v. P. & L. E. R. R. Co.*, 22 I. C. C., 640, decided March 11, 1912; *In Re Advances in Rates on Coal by the Chesapeake & Ohio Ry. Co.*, 22 I. C. C., 604, also decided on March 11, 1912. The complaint in this proceeding is similar in all essential respects to the petitions in the *Pittsburgh and Ohio No. 8 cases*; the rates are all assailed as being not only unreasonable in themselves but unjustly discriminatory by comparison with the West Virginia rates and in each case the latter charge is based upon the concert of action between the roads serving all of the districts in question in fixing the rates therefrom.

For 10 years past the rates and the differentials between the rates from the various fields which compete for lake-coal traffic have been as follows:

Year.	District.	Distance.	Rate per net ton.	Ton-mile revenue.	Differential over Hocking district.
		Miles.	Cents.	Mills.	Cents.
1902.....	Hocking, Ohio.....	193	70	3.62	.....
1903, 1904, 1905, 1906.....	do.....	193	80	4.14	.....
1907, 1908, 1909, 1910, 1911.....	do.....	193	85	4.40	.....
1902.....	No. 8 of Ohio via W. & L. E. R. R. to Huron.....	146	70	4.80	.....
1903, 1904, 1905, 1906.....	do.....	146	80	5.48	.....
1907, 1908, 1909, 1910, 1911.....	do.....	146	85	5.82	.....
1902.....	No. 8 of Ohio via Pa. lines to Cleveland.....	135	70	5.18	.....
1903, 1904, 1905, 1906.....	do.....	135	80	6.00	.....
1907, 1908, 1909, 1910, 1911.....	do.....	135	85	6.29	.....
1902.....	Pittsburgh, Pa.....	160	73	4.56	3
1903, 1904, 1905, 1906.....	do.....	160	83	5.19	3
1907, 1908, 1909, 1910, 1911.....	do.....	160	88	5.50	3
1902.....	Fairmont, W. Va.....	248	81½	3.30	11½
1903, 1904, 1905, 1906.....	do.....	248	91½	3.70	11½
1907, 1908, 1909, 1910, 1911.....	do.....	248	96½	3.90	11½
1902.....	Kanawha-Thacker, W. Va.....	400	82	2.05	12
1903, 1904, 1905, 1906.....	do.....	400	92	2.30	12
1907, 1908, 1909, 1910, 1911.....	do.....	400	97	2.42	12
1902.....	Pocahontas-New River, W. Va.....	434	97	2.23	27
1903, 1904, 1905, 1906.....	do.....	434	107	2.46	27
1907, 1908, 1909, 1910, 1911.....	do.....	434	112	2.58	27



It will be noted from this table that during the entire 10-year period embraced therein the Hocking district has borne a differential of 3 cents under the Pittsburgh district rate, although the average distance from its mines is 33 miles greater than from the Pittsburgh mines; and also that the Hocking district has always been on the same rate basis as the No. 8 district of Ohio despite the difference in distance of from 47 to 58 miles in favor of the latter district.

In the *Boileau case, supra*, the Commission found that the 88-cent rate from the Pittsburgh district to Ashtabula, Ohio, was unreasonable and that the rate for the future should not exceed 78 cents. The 88-cent rate yielded a revenue per ton-mile for the average distance of 160 miles of 5.5 mills, while the rate established by the Commission yields a revenue of 4.87 mills. In the *Pittsburgh Vein Operators case* we held the rate of 85 cents to be unreasonable to the extent that it exceeded 75 cents. This rate of 85 cents, figured on a per-ton-mile basis, was 5.82 mills via the Wheeling & Lake Erie Railroad to Huron and 6.29 mills via the Pennsylvania lines to Cleveland, while the reduced rate of 75 cents amounted to 5.1 mills and 5.5 mills, respectively. As before shown, the defendant herein, effective May 26, 1912, voluntarily reduced the Hocking district rate from 85 cents to 75 cents, or in an amount equal to the reduction from the Pittsburgh and the Ohio No. 8 districts. This cut of 10 cents reduced the revenue earned by the defendant on the Hocking district rate from 4.40 mills per ton-mile to 3.88 mills.

As a result of the Commission's orders and of the voluntary action of the interested lines in consequence thereof, the rate adjustment in the Ohio, Pennsylvania, and West Virginia fields is to-day as follows:

District.	Rate.	Differential over Hocking district.
	Cents.	Cents.
Hocking.....	75	
Ohio No. 8.....	75	
Pittsburgh, Pa.....	78	3
Fairmont, W. Va.....	90	15
Kanawha-Thacker, W. Va.....	97	22
Pocahontas-New River, W. Va.....	112	37

It will be seen, by referring to the table preceding this one, that the effect of the change in the rates from the various districts has been to *increase* the differentials of the West Virginia fields over the Hocking district in the following amounts: Fairmont from 11½ to 15 cents, Kanawha-Thacker from 12 to 22 cents, and Pocahontas-New River from 27 to 37 cents. It thus appears that the complainant is to-day more advantageously situated, both in the amount of its rate and in comparison with its competitors in the West Virginia fields,

than it was when this proceeding was instituted. Attention might also be called to the fact that at present the Hocking district is enjoying a rate that is only one-quarter of 1 mill per ton-mile in excess of the rate from the Fairmont district, its nearest competitor in West Virginia, although the Fairmont rate is  $6\frac{3}{4}$  cents per net ton lower to-day than last year, and the average distance from the district is 55 miles, or  $28\frac{1}{2}$  per cent greater than from the Hocking district.

Our consideration of the testimony and exhibits submitted by the complainant in this case does not lead to the conclusion that the rate of 75 cents is unreasonable under the conditions prevailing at present. The record does not show that the traffic here involved is more remunerative than the coal tonnage from the Pittsburgh district. With respect to the effect of the Pittsburgh rate upon the entire coal-rate adjustment to the lakes, the Commission said in the *Boileau case*:

The testimony of the defendants makes the Pittsburgh-Ashtabula rate the keystone of the entire system of lake-coal rates. This keystone is involved in this proceeding. It determines the relative level of all other rates in the structure and should, therefore, be considered carefully and deliberately as a rate in and of itself without reference to any other rate.

There is no evidence that the existing differentials between the rate from the various districts are unreasonable. The Hocking Valley is the only defendant in this case and it does not serve the other fields. It shares in some of the West Virginia tonnage only as a delivering carrier. The carriers that originate the tonnage from West Virginia are not before us in this proceeding and it is manifest that we can not here pass upon the relation of the West Virginia rates to the Hocking district rate.

The complaints will be dismissed.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET NOS. 88 AND 88-A.  
IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF SAND AND GRAVEL IN CARLOADS, FROM JANESVILLE, WIS., TO CHICAGO, ILL., AND BETWEEN OTHER POINTS.

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*Submitted May 16, 1912. Decided June 3, 1912.*

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Having failed to justify the increased rates on sand and gravel, from certain Wisconsin points to Chicago and its suburbs, proposed in tariffs under suspension, the respondents are required to maintain the present rates.

*Charles E. Pierce* for Janesville Sand & Gravel Company, Southern Wisconsin Sand & Gravel Company, and Clark & Fisher Company.

*H. W. Adams* for Beloit Sand & Gravel Company.

*C. C. Wright* for Chicago & North Western Railway Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

**HARLAN**, *Commissioner*:

The shipping stations on the lines of the Chicago & North Western and the Chicago, Milwaukee & St. Paul from which sand and gravel move to Chicago and its suburbs are divided into two rate groups known as the inner and outer zones. The inner zone is within the state of Illinois and the average haul from those points is from 40 to 45 miles. The longest haul is 48 miles. The rate is 1½ cents per 100 pounds. Janesville and Beloit, the principal shipping points for these commodities in the outer zone, are in the state of Wisconsin. Such movements are therefore interstate, and they involve a haul of about 90 miles. The rate that has been in effect since 1910 from those and other points in the outer zone is 1¾ cents per 100 pounds. By a tariff intended to become effective on March 15, 1912, a rate of 3 cents per 100 pounds was fixed for the outer zone and a rate of 2 cents for the inner zone; but this tariff was suspended by our order until July 13, 1912, and this inquiry instituted. At about the same time proceedings were had before the state commission of Illinois in behalf of shippers of sand and gravel from the inner zone. As the result of the hearing before that body the defendants withdrew



their increased rate and agreed to restore their previous rate of  $1\frac{1}{2}$  cents. While defending the proposed 3-cent rate from points in the outer zone, they now offer to meet the wishes of the protestants to the extent of establishing and maintaining a rate of 2 cents. The question then is as to the reasonableness of this rate.

The Chicago sand market requires 800 carloads a day. Sand for the general building trade is largely drawn from the lake bed in the harbor of Chicago; but the sand from the inner and outer zones is known as "torpedo" sand and is particularly useful in concrete work. The methods of preparing it for market differ somewhat in the two zones; but apparently there is no difference in the quality of the output, the sand from both zones being equally in demand.

The suspended tariff was constructed on the basis of a differential of 1 cent per 100 pounds between the two zones. The carriers contend that in no event should the differential be less than three-fourths of a cent. In order, however, to meet the complaint of the Wisconsin shippers, they express a willingness to fix a differential of one-half cent by maintaining a 2-cent rate from the outer zone, having reestablished the  $1\frac{1}{2}$ -cent rate from the inner zone. But the sand companies, on whose protest the increased rates were suspended, contend, and we think have fairly proved, that a differential against the outer zone of one-half cent will exclude them from the Chicago market as effectively as the differential of 1 cent fixed in the new tariff. They assert that any rate from the outer zone that exceeds the rate of their competitors in the inner zone by more than one-fourth cent per 100 pounds will make it impossible for the sand and gravel pits of the outer zone to compete in Chicago with the output of the pits in the inner zone.

The four concerns operating in the outer zone aver that their investments in their respective plants, amounting to from \$15,000 to \$30,000, were made or largely increased in the belief that the  $1\frac{3}{4}$ -cent rate would be maintained; and much is said of record in question of the good faith of the new tariff. The first commodity rate on sand from Janesville was  $2\frac{1}{2}$  cents and seems to have been made effective when the Knickerbocker Ice Company, now the largest competitor of the protestants, opened a sand and gravel plant at that point. Later the rate was reduced to the present rate of  $1\frac{3}{4}$  cents. The protestants point to the fact that the first increase in their freight charges, after the rate last mentioned had been established, was coincident with the abandonment by the Knickerbocker Ice Company of its sand and gravel pits in the outer zone and the opening by it of new pits in the inner zone. This increase took the form of a discontinuance by the North Western and the St. Paul of the reciprocal absorption of switching charges on sand and gravel at Janesville or Beloit. Shortly

thereafter the suspended tariff was filed increasing the rate from  $1\frac{1}{4}$  cents to 3 cents.

The inference that we are expected to draw from this testimony is that the proposed readjustment of rates results from the efforts of the Knickerbocker Ice Company to secure an advantage for its new pits in the inner zone. It is also said that if the increase is allowed to become effective the plants in the outer zone must now be shut down and that the investment in them will be lost. It is difficult, however, to assign definite value to statements and intimations of this kind. While the possibility that the sand and gravel pits of the outer zone may be compelled to cease their operations should not be lost sight of altogether, the real duty before us is to ascertain what, under all the circumstances surrounding the traffic, is the proper relation of rates on sand and gravel as between the two zones. On that question there is testimony of record upon which we may base definite conclusions:

In the first place it appears from the history of these rates that the North Western as long ago as September, 1904, published a commodity rate of 2 cents per 100 pounds from Cary and Algonquin and other points within what is now known as the inner zone. At that time the only rate on sand from Beloit or Janesville to Chicago was a class rate approximating 6 cents per 100 pounds, under which of course the traffic could not and did not move. But in December, 1905, that line published a commodity rate of  $2\frac{1}{4}$  cents from Beloit; it made the same rate effective from Janesville in June, 1908. The St. Paul put that rate in effect from Beloit in December, 1906, and from Janesville in July, 1908; from Fisher's Pit, just east of Janesville, it made that rate effective in May, 1907. During all that time the rate from Cary and Algonquin, in the inner zone, remained at 2 cents. In other words, the carriers some years ago voluntarily fixed a differential of one-fourth of a cent between the two zones. The North Western reduced the rate from Beloit in May, 1909, and from Janesville in October, 1909, to  $1\frac{3}{4}$  cents and at the same time reduced the rate from the inner zone to  $1\frac{1}{2}$  cents, thus preserving the differential of one-fourth of a cent. The St. Paul made that rate from both points in July, 1909. The rate of  $1\frac{3}{4}$  cents per 100 pounds remained unchanged on both lines until the tariffs now under suspension were filed. They were voluntary rates, so far as the record advises us, and were not the result of any competitive transportation influences, although there are some intimations of competitive commercial conditions. It appears therefore that in their actual experience with this traffic the carriers had ascertained that a differential of one-fourth of a cent over the rate from the inner zone was the proper basis for the rate from the outer zone; and the record



makes no showing of any change in the general conditions surrounding the traffic that requires or justifies a higher basis at this time for the outer zone rate.

Sand loads heavily, an average carload weighing about 90,000 pounds. It weighs about 3,000 pounds to the yard and sells in Chicago for 80 cents. In that market a carload of 90,000 pounds is worth about \$24 on the basis of a rate of  $1\frac{1}{4}$  cents from Janesville. At the pit it is worth less than \$7.50. It is therefore a very low grade commodity. It does not require a fast service and the liability for loss and damage is small. While it is said that sand moves from the inner zone in train loads, which is not the case from Beloit and Janesville, the protestants contend, on the other hand, that empty cars must be moved to those pits to take care of the traffic, while from Beloit and Janesville the movement is in foreign cars that have moved northward under load. The traffic from those points, therefore, is of value to the carriers in that it obviates an empty southbound movement. The respondents point out that the traffic involves the use of expensive terminal facilities and assert that it does not bear its fair proportion of the cost of those facilities, their earnings under the present rate of  $1\frac{1}{4}$  cents being only 4.28 mills per ton per mile. Under the advanced rate their earnings would be 6.46 mills. Under the present rate their average revenue per car from Janesville is \$15.75; under the proposed rate of 3 cents the earnings would be \$27. During the month of July, 1911, the inner-zone traffic yielded an average revenue per car of \$13.25 for an average load of 46 tons and an average haul of 48 miles; during the same months the average receipts on the traffic from Wisconsin points were \$15.44 per car, with an average load of 42 tons and an average haul of 91 miles. We do not understand that there are any switching-charge absorptions on this traffic in Chicago.

Several rate comparisons are made by the respondent carriers to indicate that the present rate on sand and gravel is a very low rate compared with rates on coal, brick, and other similar commodities. On the other hand the protestants also make some rate comparisons. They refer particularly to a rate of three cents on ice to Chicago from originating points from 17 to 90 miles distant, the average revenue being \$18 for an expedited service. They also refer to a 6-cent rate on lime to Chicago from stations 18 to 185 miles distant on an average carload of from 30,000 to 35,000 pounds, yielding earnings from \$18 to \$21 a car, out of which switching absorptions are made, leaving net revenues of from \$12 to \$15.

The  $1\frac{1}{4}$ -cent rate is undoubtedly a low rate, but the commodities to which it applies are also of the lowest class of commodities in commerce. While earnings of 4.28 mills per ton per mile on any



kind of traffic can not be regarded as high, rates are to be found, even where the hauls are short, under which even lower earnings are made. Upon all the facts before us it is clear that the increased rates from the outer zone ought to be justified of record. Under the act this burden of proof rests upon the respondents, and upon a careful study of the record we find that it has not been sustained.

An order will be entered requiring the maintenance of the present rates from the points in question to Chicago and suburban points.

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No. 4448.

F. G. ALEXANDER

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

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*Submitted April 20, 1912. Decided June 6, 1912.*

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Complainant found to have been given due notice of arrival, and demurrage charges were therefore properly assessed. Complaint dismissed.

*J. T. Slatter* for complainant.

*E. K. Campbell* for defendant.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant is engaged in the wholesale brokerage business at Birmingham, Ala. On September 28, 1911, it filed a petition for reparation in the sum of \$11 on the ground that defendant wrongfully collected said amount as a demurrage charge on a carload of hay transported from Kansas City, Mo., to Birmingham, Ala.

Evidence was introduced to show that the car arrived at Birmingham on September 26, 1910, and that bill of lading was surrendered and order for placement was given by complainant on October 12, 1910, the demurrage charge accruing during the interval.

Defendant's demurrage tariff in force at the time provided in part with respect to notification:

Item 10 (a).—Consignee shall be notified by carrier's agent in writing, or otherwise as agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, \* \* \*.

It further authorized the refund or cancellation of demurrage charges collected on cars detained by reason of "Railroad errors or omissions."

The sole question to be determined is: Did defendant fail to notify complainant as required by its tariff rule and thus bring the shipment within the provision for exemption from demurrage charges because of error or omission?

The paid demurrage bill offered in evidence shows arrival September 26, and notification September 27, in addition to which defendant filed a duplicate of its freight arrival notice bearing date September 26, 1910. There was submitted at the hearing the original record book of the Frisco's Birmingham station, containing signature of one C. B. Rencher to receipt at 9.30 a. m., September 27, 1910, of notice of arrival of Louisville & Nashville car 6819, the car in dispute.

Rencher, testifying, acknowledged the signature as his, and while there is no evidence that authority was ever given him to sign for notices of arrival of freight, telegrams, or any other documents for account of petitioner, it nevertheless appears that petitioner customarily was and is away from his office a good deal of the time, in consequence of which Rencher and others, occupying offices directly across the hall from petitioner's office, frequently sign for his telegrams, notices, etc. Such signatures were at times secured in petitioner's office and at other times in the offices of the signers. In the present instance the testimony indicates that notice was left in petitioner's office and Rencher's signature there secured. Disposition of the notice thereafter does not appear.

Our conclusion is that the action of the carrier was in substantial accord with the provisions of its tariff, and that the demurrage charges were properly assessed and may not lawfully be refunded. It follows that the complaint should be dismissed.

24 I. C. C.

No. 4501.

J. H. BITZER

v.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

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*Submitted March 13, 1912. Decided June 8, 1912.*

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1. Defendant operates a system of electric railway lines between Washington, D. C., and points in the state of Virginia. Its passenger fares between Washington and Mount Vernon, Va., are unreasonable and unduly discriminatory. Lower fares prescribed for the future.
2. The one-way and round-trip passenger fares between Washington and certain points on defendant's Falls Church line found to be unreasonable, and lower fares prescribed for the future.
3. Defendant provides commutation rates between Washington and certain points on its lines, and it should, to avoid undue discrimination, provide commutation rates for travel under similar conditions between Washington and the other points on its lines.

*F. R. Whipple* for complainant.

*John S. Barbour* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a resident of Alexandria, Va., files this petition on behalf of himself and other persons who travel over defendant's lines between Washington, D. C., and points in the state of Virginia.

Defendant is a Virginia corporation engaged in operating a system of electric railway lines embracing a line extending from Twelfth street and Pennsylvania avenue, northwest, Washington, D. C., via Arlington Junction, Clarendon, and Falls Church, Va., to Fairfax, Va., a distance of 20.78 miles, hereinafter referred to as the Falls Church division, and a line extending from the same point via Arlington Junction and Alexandria, Va., to Mount Vernon, Va., a distance of 16.01 miles, hereinafter referred to as the Mount Vernon division. Both divisions use the same track from the Washington city terminal via the highway bridge to Arlington Junction.

The history of the system is as follows: The Washington, Arlington & Falls Church Railway Company constructed and formerly owned a line of electric railway extending from Rosslyn, Va., via Clarendon and Falls Church, to Fairfax, Va.; also a line extending from Clarendon to a point of connection with the Mount Vernon line at Mount Vernon Junction, and a line extending from Rosslyn to



Nauck, Va. The Washington, Alexandria & Mount Vernon Railway Company constructed and formerly owned a line of electric railway extending from Twelfth street and Pennsylvania avenue, in Washington, D. C., via the highway bridge, Arlington Junction, and Alexandria, to Mount Vernon, Va., and a line extending from Arlington Junction, via Mount Vernon Junction, to Rosslyn, Va. Rosslyn is situated at the south end of the aqueduct bridge at Georgetown, D. C. September 29, 1908, the lines of the Washington, Arlington & Falls Church Company were leased to the Washington, Alexandria & Mount Vernon Company, and both lines were thereafter operated by the latter company until September 30, 1910. The two companies were merged with and into the Washington-Virginia Railway Company on October 17, 1910. The lines have since been operated by the last-named company, the defendant herein, as one system, consisting of about 46 miles of railway.

The petition in effect assails defendant's entire schedule of fares between Washington City and points on its lines in Virginia as excessive, unreasonable, and unduly discriminatory. In the following table are set forth certain points representative of the general situation, together with the distances and the one-way, round-trip, and monthly commutation fares charged:

*Between Twelfth street, Washington, D. C., and points named in Virginia.*

Stations.	One-way fares.			Round-trip fares.			52-trip monthly fares.		
	Distance traveled.	Rate.	Rate per mile.	Distance traveled.	Rate.	Rate per mile.	Distance traveled.	Rate.	Rate per mile.
<b>FALLS CHURCH DIVISION.</b>	<i>Miles.</i>		<i>Cents.</i>	<i>Miles.</i>		<i>Cents.</i>	<i>Miles.</i>		<i>Cents.</i>
Clarendon.....	5.82	\$0.10	1.71	11.64	\$0.20	1.71	302.64	\$4.77	1.58
Veitch.....	7.60	.12	1.57	15.20	.24	1.57	395.20	4.77	1.21
Highland Park.....	8.29	.15	1.80	16.58	.25	1.50	431.08	5.82	1.35
Falls Church, West....	11.05	.20	1.80	22.10	.40	1.80	574.60	6.67	1.16
Robey.....	12.50	.30	2.40	25.00	.50	2.60	650.00	7.27	1.12
Franklin.....	14.35	.35	2.43	28.70	.55	1.91	746.20	7.42	.99
Vienna.....	15.54	.40	2.57	31.08	.60	1.93	808.08	7.42	.92
Oakton.....	18.08	.50	2.76	36.16	.75	2.07	940.16	8.02	.85
Fairfax.....	20.78	.55	2.64	41.56	.85	2.05	1,080.56	9.37	.87
<b>MOUNT VERNON DIVISION.</b>									
South end highway bridge.....	2.10	.05	2.43	4.20	.10	2.47	-----	-----	-----
Virginia Highlands....	3.62	.10	2.76	7.24	.15	2.07	-----	-----	-----
Del Ray.....	5.61	.10	1.78	11.22	.20	1.78	-----	-----	-----
Lloyds.....	5.83	.15	2.57	11.66	.25	2.14	-----	-----	-----
Alexandria.....	7.91	.15	1.89	15.82	.25	1.58	411.32	4.05	.98
New Alexandria.....	9.72	.15	1.53	19.44	.25	1.29	505.44	4.05	.80
Dyke.....	11.37	.20	1.75	22.74	.30	1.35	591.24	4.70	.79
Wellington.....	12.69	.20	1.57	25.38	.30	1.18	659.88	5.20	.79
Arcturus.....	12.91	.25	1.93	25.82	.35	1.35	671.32	5.32	.79
Hunters.....	14.40	.25	1.74	28.80	.35	1.21	748.80	5.91	.79
Mount Vernon.....	16.01	.40	2.49	32.02	.75	2.33	832.52	6.57	.79

The 52-trip ticket sold from the 1st to 5th of each month on the Mount Vernon division is limited to the calendar month in which it is issued. This is also the case on the Falls Church division, but in addition the latter division provides for tickets sold from 15th to 17th

of each month, good until 15th of following month, and is accepted for travel on the Falls Church division to or from Washington only when an additional charge of 5 cents, or a District of Columbia street-car ticket, is paid for each trip.

Defendant issues 25-trip monthly tickets, good for 30 days from date of issue, applicable between Washington and Alexandria, and 25-trip family tickets, good for 30 days from date of issue, between Washington and points on the Falls Church division, with an additional 5-cent fare or a District of Columbia street-car ticket.

Complaint is made that special commutation fares are not maintained for the use of pupils who attend the schools in Washington city. For a number of years prior to October 10, 1902, special rates were published by the Washington, Alexandria & Mount Vernon Company for the use of pupils not over 18 years of age who were actually attending grammar or high schools in Washington, but being advised that these rates as published were unlawful the company canceled them. There can be no question that said rates as published were unduly discriminatory. No sufficient reason is shown, however, why special commutation rates for young persons between certain ages should not be established, provided the rates are not limited to pupils of schools of any particular kind or class and do not exclude other persons between the same ages who travel under substantially similar transportation circumstances and conditions.

It is contended that the life of the 25-trip family ticket should be extended beyond 30 days, but the record discloses nothing to justify a holding that the existing limit is unreasonable. Tickets of this character are not available for travel between Washington and points on the Mount Vernon division. We are of the opinion that the same character of fares should be available to patrons of either division for substantially the same character of service. That is, if 25-trip family tickets or 52-trip commutation tickets are sold for travel to and from one station, the same character of tickets with substantially similar rates should be furnished for travel under like conditions to and from other stations. And this same general principle applies to fares of other character.

As to certain stations on the Falls Church division, the one-way and round-trip fares are considerably higher than the same character of fares for substantially similar distances on the Mount Vernon division. To Robey, which is 12.50 miles from Washington on the Falls Church division, the one-way fare is 30 cents and the round-trip fare 50 cents, whereas to Wellington, which is 12.69 miles from Washington on the Mount Vernon division, the one-way fare is 20 cents and the round-trip fare 30 cents. To Franklin, which is 14.35 miles from Washington on the Falls Church division, the one-way fare is 35 cents and the round-trip fare 55 cents, whereas to Hunters, which



is 14.40 miles from Washington on the Mount Vernon division, the one-way fare is 25 cents and the round-trip fare 35 cents. The same situation is true of other points. The record shows no substantial difference in the transportation conditions that will justify so wide a difference in the fares for distances so nearly the same.

Defendant claims that the varying fares on the two divisions are the outgrowth of the former managements, and it is stated that the patrons do not want them changed. This petition has been filed, however, and as to some of the fares we think there is just ground for complaint.

The one-way fare between Washington and Mount Vernon is 40 cents, and the round trip 75 cents. It is averred that these fares are unreasonable, and also unduly discriminatory as compared with the fares between Washington and Miller, a station three-fourths of a mile nearer Washington. The Miller fares are 25 cents one way and 35 cents round trip. This wide difference in the fares for the very slight increase in distance, defendant undertakes to justify on the theory that its 52-trip commutation tickets which apply between Washington and Mount Vernon furnish a very low rate of transportation. But it is clear that these commutation rates do not place Mount Vernon on the same basis, relatively, with Miller as respects local travel. To get the benefit of such rates a patron is compelled to purchase a 52-trip ticket, limited in its use to the calendar month in which it is issued, though the service required may not involve the half or a quarter of that number of trips during the month.

Defendant's passenger fares are based upon a zone system. For the first zone on the Mount Vernon division a fare of 5 cents is charged. The fare is then increased as distance increases, on a basis of 5 cents for each zone to and including the zone in which Miller is situated. The next and last zone of the division extends for a distance of only three-fourths of a mile, and Mount Vernon, the terminus, is the only station within it. For this short distance defendant increases the one-way fare by the sum of 15 cents and the round-trip fare by 40 cents. As is well known, Mount Vernon is an historic spot by reason of its having been the home of Washington and because it is there upon the banks of the Potomac that his remains are laid.

It is stated in the brief of defendant that visitors to Mount Vernon are mostly people of means who do not care particularly about the rate of fare charged, whether it is large or small, provided it is fair and reasonable. It is further set forth that "tourists who have come long distances to Washington wish usually, before leaving, to go to Mount Vernon, and they do not figure and do not care whether the fare is 50 cents or 75 cents for the round trip, provided they can get there comfortably, be taken care of properly while



there, and be returned in the evening." For these reasons and others stated by counsel it is submitted "that there is, under existing conditions, no public necessity for lowering this fare."

We are not prepared to concede the correctness of the views of defendant as to the nature of this important service or the public's indifference to the amount of said fare. There may have been a time when the average visitor to the national capital could be classed as a person of means, but that is no longer the case. In fact, we are led to believe that quite the contrary is true. It is well known that at the present time of the year there are thousands of young people, many of them students of the public schools in distant states, who come to Washington in large excursions for the patriotic purpose of visiting the national capital. It is no doubt true that it is now the citizen of average means who makes up the bulk of the tourist travel to Washington, furthermore it is our duty to adjust the rate to Mount Vernon upon a reasonable basis for both the public and the carrier irrespective of any particular class of patrons. It is true that the thousands of citizens who make the pilgrimage to Mount Vernon require the running of extra trains, but we apprehend that the service rendered is merely that which is necessary to accommodate traffic the carrier holds itself out to serve. The tourist movement to Mount Vernon comes after the so-called rush-hour movement to the city in the morning and is in the opposite direction from the heavy traffic in the afternoon.

It is clear, however, that the regular service of defendant may be considered as separate and distinct from the tourist travel to and from Mount Vernon. The latter is confined to six days in the week as the ladies' association which manages Mount Vernon closes it to visitors on Sunday. Moreover, it is our understanding that the trains run to accommodate visitors to Mount Vernon permit a stop-over at Alexandria for the purpose of inspecting points of interest in that city. It is worth something to the visitors to have a through-train service to Mount Vernon with only the one stop at Alexandria. For the local travel between Mount Vernon and Washington on the regular trains, however, we find no justification for the present one-way and round-trip fares. As has already been stated, the fares are graded up by zones with an increase of 5 cents in the fare for each zone. Upon this basis, to Miller, three-fourths of a mile nearer to Washington than is Mount Vernon, the one-way fare is 25 cents and the round-trip 35 cents. Upon the record we are of opinion and find that the fare to and from Mount Vernon on local trains should not exceed 30 cents for the one-way, and 45 cents for the round trip. For the service rendered by express trains, however, it is our conclusion that the rate should not exceed 35 cents one-way, and 60 cents for the round trip.

With reference to rates on the Falls Church division, complainant refers to rates charged by other electric lines, including the Washington, Baltimore & Annapolis Railway Company, for substantially similar distances of travel between Washington and various points in the state of Maryland. A table showing the one-way and round-trip fares charged, respectively, by the defendant and the Washington, Baltimore & Annapolis Company, fairly representative of the general situation, is here given as follows:

	Distance.	One way.		Round trip.	
		Fare.	Rate per mile.	Fare.	Rate per mile.
WASHINGTON-VIRGINIA STATIONS.					
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Virginia Highlands.....	3.62	10	2.76	15	2.07
Lloyds.....	5.83	15	2.57	25	2.14
Alexandria.....	7.91	15	1.89	25	1.58
Mt. Vernon.....	16.01	40	2.49	75	2.33
Robey.....	12.50	30	2.40	50	2.00
Vienna.....	15.54	40	2.57	60	1.93
Fairfax.....	20.78	55	2.64	85	2.05
WASHINGTON, BALTIMORE & ANNAPOLIS STATIONS.					
Glenarden.....	3.62	10	2.76	15	2.07
Buena Vista.....	6.56	15	2.28	25	1.89
Bell.....	8.03	15	1.86	25	1.55
Lloyd.....	11.05	25	2.26	45	2.03
Conway.....	13.78	30	2.17	55	2.00
Francis.....	15.63	40	2.55	70	2.23
Arundel.....	22.02	50	2.27	90	2.04

The distances to the Washington, Baltimore & Annapolis stations are from the District of Columbia line, and the fares stated in the table are 5 cents lower one way and 10 cents lower for the round trip than the fares named in the company's tariff. This is because the rates as published include a District street-car fare one way or two fares round trip.

Comparative statements of the monthly commutation fares charged by the companies, respectively, are shown in the following table:

	Distance from Washington.	Distance traveled.	Rate.	Rate per mile.
<b>WASHINGTON-VIRGINIA STATIONS, 52-TRIP.</b>				
<i>Mount Vernon Division.</i>		<i>Miles.</i>		<i>Cents.</i>
Alexandria.....	7.91	411.32	\$4.05	.98
New Alexandria.....	9.72	505.44	4.05	.80
Dyke.....	11.37	591.24	4.70	.79
Belmont.....	12.27	638.04	5.03	.79
Wellington.....	12.69	659.88	5.20	.79
Mount Vernon.....	16.01	832.52	6.57	.79
<i>Falls Church Division.</i>				
Clarendon.....	5.82	302.64	1 4.77	1.58
Veitch.....	7.60	395.20	1 4.77	1.21
Falls Church, West.....	11.05	574.60	1 6.67	1.16
Franklin.....	14.35	746.20	1 7.42	.99
Vienna.....	15.54	808.08	1 7.42	.92
Oakton.....	18.08	940.16	1 8.02	.85
Fairfax.....	20.78	1,080.56	1 9.37	.87

<sup>1</sup> Includes city fare.



	Distance from Dis- trict Line.	Distance traveled.	Rate.	Rate per mile.
WASHINGTON, BALTIMORE & ANNAPOLIS STATIONS, 54-TRIP.				
	<i>Miles.</i>	<i>Miles.</i>		<i>Cents.</i>
Cherry Grove.....	5.30	286.20	\$4.30	1.50
Bell.....	8.03	433.62	5.10	1.18
High Bridge.....	9.97	538.38	5.70	1.06
Lloyd.....	11.05	596.70	6.00	1.01
Bowie.....	11.92	643.68	6.30	.98
Myers.....	12.68	684.72	6.90	1.01
Waugh Chapel.....	16.74	903.96	7.80	.86

It appears from the foregoing tables that certain one-way and round-trip fares of defendant to points on the Falls Church division are materially higher than the rates charged for substantially similar distances by the Washington, Baltimore & Annapolis Company.

Specific complaint is made of the one-way and round-trip fares between Fairfax and Washington. Fairfax is the terminus of the Falls Church division, and is 20.78 miles from Washington. The one-way fare is 55 cents and the round-trip fare 85 cents. Upon consideration of all the facts of record we are of opinion and find that these fares are unreasonable, and that as to Fairfax and points in the same zone the fares should not exceed 50 cents one way or 80 cents for the round trip.

We are also of opinion and find that between Washington and points on the Falls Church division intermediate between the zone in which West Falls Church is situated and the Fairfax zone, the present one-way and round-trip fares are unreasonable. We find that as between Washington and the stations known as Robey, Antrim, and Burr the fares should not exceed 25 cents one way or 40 cents for the round trip; that as between Washington and the stations known as Dunn Loring, Enola, Wedderburn, Woodford, and Franklin the fares should not exceed 30 cents one way or 50 cents for the round trip; that as between Washington and the stations known as Vienna and Park street the fares should not exceed 35 cents one way or 55 cents for the round trip; that as between Washington and the stations known as Library, Lewis street, Bothwell, and Five Oaks the fares should not exceed 40 cents one way or 60 cents for the round trip; and that as between Washington and the stations known as Edgelea, Oakton, and Sanger the fares should not exceed 45 cents one way or 70 cents for the round trip.

Upon the hearing and in the briefs of counsel of both complainant and defendant the matter of the financial standing of defendant was gone into. In this connection we have examined the report made to this Commission by the Washington-Virginia Company for the period from September 30, 1910, to June 30, 1911. It shows that on the latter date the company's total outstanding capital was \$5,780,300, con-



sisting of \$2,378,300 of stock and \$3,402,000 of funded debt. The reports made by the Mount Vernon and Falls Church companies show that on September 30, 1910, the date of the combined operation, their combined capital was \$5,402,000, consisting of \$2,000,000 of stock and \$3,402,000 of funded debt. It thus appears that on June 30, 1911, the total capital was \$378,300 more than at the date of the combined operation, the additional amount consisting entirely of stock. Defendant asserts, and it is so set forth in the contract of merger, that at the date of the contract there was outstanding against the Washington-Virginia Company a stock issue of \$1,000,000, "full paid and non-assessable." It is accordingly claimed that the capital stock was not increased by the merger, but was in fact decreased. The amount of money received from the sale of the stock is not disclosed. The company owned no line of railway prior to the merger and was not then an operating concern.

The reports show that for the period of nine months ended June 30, 1911, the net income of the Washington-Virginia Company, after deducting taxes, interest, and other fixed charges, was \$45,208.60, of which amount the sum of \$28,783 was paid in dividends on stock and the residue of \$16,425.60 was passed to surplus account; and that for the period of three years and three months prior to the merger the net annual income of the Washington, Alexandria & Mount Vernon Company and the disposition thereof were as follows: For the months of July, August, and September, 1910, \$24,239.07, all of which was passed to surplus account; for the year ended June 30, 1910, \$83,466.41, of which the sum of \$30,000 was applied to dividends and \$53,466.41 passed to surplus account; for the year ended June 30, 1909, \$59,193.19, of which the sum of \$30,000 was applied to dividends and \$29,193.19 passed to surplus account; and for the year ended June 30, 1908, \$32,452.21, of which the sum of \$15,000 was applied to dividends and \$17,452.21 passed to surplus account.

For the year ended June 30, 1908, and for the months of July, August, and September, 1908, during which time the Washington, Arlington & Falls Church Company was still in operation, that company was apparently operated at a loss.

The aggregate net income of the Washington-Virginia Company and the Washington, Alexandria & Mount Vernon Company for the four years amounted to \$244,559.48. The yearly average was \$61,139.87, the equivalent of a dividend of 5 per cent on a capital stock of \$1,222,797.40, or 3 per cent on a capital stock of \$2,037,996.

On June 30, 1911, the total outstanding capital issued against the 45.83 miles of railway amounted to \$5,780,300, or \$126,124.81 per mile. The record does not show the amount of money actually invested in the several lines, or the amount of money actually received from the sale of stocks and bonds. The original cost of the property devoted

to the service of the public is not disclosed. It is inconceivable, however, that the property should have cost the enormous sum of \$126,124.81 per mile of line. Assuming that the amount of money actually invested in the property was \$60,000 per mile, or \$2,749,800 as a whole, the total cost would be only \$371,500 more than the present outstanding stock. It would be \$652,200 less than the present funded debt. For the period of two years prior to June 30, 1911, during which both divisions were operated free from control by the Washington, Arlington & Falls Church Company, the net annual operating revenues were \$246,834.55 for the year ended June 30, 1911, and \$258,780.65 for the year ended June 30, 1910, a yearly average of \$252,807.60. The average yearly taxes amounted to \$29,325.05. This sum deducted from the average net operating revenue would leave \$223,482.55, the equivalent of 6 per cent on a capitalization of \$3,724,709, or \$2,058,591 less than the outstanding capital on June 30, 1911. Upon the above showing the capitalization appears to be grossly excessive. *Beall v. W., A. & M. V. Ry. Co.*, 20 I. C. C., 406.

We shall expect the defendant to readjust its tariff of fares in accordance with the views herein expressed. If this is not done on or before August 1, 1912, we shall enter the necessary order to give effect to our conclusions.

24 I. C. C.

No. 3277.

RIVERSIDE MILLS

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY  
ET AL.

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*Submitted November 8, 1910. Decided June 8, 1912.*

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Upon complaint alleging that the prescribed minimum carload weight and rates applicable to the transportation, under defendants' tariffs, of cotton waste and cotton-factory sweepings were unreasonable, *Held:*

1. That the minimum weight of 24,000 pounds applicable to the transportation of cotton-factory sweepings from Cordova, Ala., to Augusta, Ga., was unreasonable to the extent it exceeded the minimum of 15,000 pounds subsequently established. Reparation awarded.
2. That a rate of 40 cents per 100 pounds for the transportation of less-than-carload lots of cotton-factory sweepings from Lindale, Ga., to Paducah, Ky., was unreasonable to the extent it exceeded the rate of 32 cents subsequently established. Reparation awarded.
3. That when a shipment of cotton-factory sweepings or cotton waste is tendered to the carrier which requires a car of greater capacity than can be furnished by the carrier, two or more smaller cars should be furnished and charges assessed upon basis of the actual weight of the shipment, but not less than the minimum weight prescribed in the tariff for a carload. Reparation awarded.
4. That a rate of \$1.89 and carload minimum weight of 30,000 pounds, applicable to the transportation of cotton waste from Augusta, Ga., to Clifton, Ariz., is not, upon the record, shown to have been unreasonable.

*R. J. Southall* for complainant.

*M. P. Callaway* for St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway; Western & Atlantic Railroad; Nashville, Chattanooga & St. Louis Railway; Charleston & Western Carolina Railway Company; Mobile & Ohio Railroad Company; and Illinois Central Railroad Company.

*N. W. Proctor* for Louisville & Nashville Railroad Company.

*Ernest Williams* for Charleston & Western Carolina Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged, at Augusta, Ga., in the manufacture, sale, and shipping of cotton-factory sweepings, cotton



waste, etc. By petition, filed May 11, 1910, and three amendments thereto, it alleges that by reason of the provisions of defendants' tariffs and classification relative to minimum weights to be applied to the transportation of cotton waste and cotton-factory sweepings it has been subjected to the payment of unjust and unreasonable charges on certain of its shipments hereinafter described. Reparation is asked.

During the period from February 27, 1909, to January 13, 1910, there was shipped from Cordova, Ala., to complainant at Augusta, 25 carloads of cotton-mill sweepings. Twenty-three carloads, consisting of 983 bales, aggregating 412,277 pounds, moved via the lines of the St. Louis & San Francisco, Seaboard Air Line, and Charleston & Western Carolina railroads. The actual weights of the shipments ranged from 13,402 pounds to 23,327 pounds. Six of the shipments were charged at actual weight and the less-than-carload rate of 36 cents. The other shipments were charged at the carload rate of 24 cents and minimum weight of 24,000 pounds. Upon the basis indicated the total charges collected amounted to \$1,297.54. One car of 49 bales, weighing 20,576 pounds, moved via the Frisco, Seaboard, and Georgia railroads. Another shipment, consisting of 23 bales, weighing 18,105 pounds, moved over the Frisco and Central of Georgia railroads. On each of these charges in the sum of \$57.60 were collected, based on a rate of 24 cents, carload minimum 24,000 pounds. Complainant contends that 24,000 pounds was an unreasonably high minimum, and that a reasonable basis of charge for the service would have been at the rate of 24 cents in carloads, subject to a minimum of 15,000 pounds.

Prior to June 1, 1909, the tariff of the St. Louis & San Francisco Railroad Company, to which the Seaboard Air Line; Charleston & Western Carolina; Georgia; and Central of Georgia railroads were each a party, named a joint commodity rate of 24 cents from Cordova to Augusta on cotton-factory sweepings in carloads, subject to a carload minimum of 24,000 pounds. The less-than-carload rate was 36 cents. On the date mentioned the participating carriers named were eliminated from the Frisco tariff and each became, on the same day, parties to a tariff of the Charleston & Western Carolina Railroad which, in connection with all the defendants herein, named a rate of 24 cents from Cordova to Augusta on cotton-factory sweepings, minimum carload weight 15,000 pounds. This tariff also carried a less-than-carload rate of 36 cents. Thus it appears that the shipments which moved subsequent to June 1, 1909, were overcharged to the extent that the charges assessed exceeded those which should have been assessed under the Charleston & Western Carolina tariff. At the hearing the defendants admitted the unreasonableness of a 24,000-pound minimum weight.

Upon all the facts of record we are of the opinion and find that a reasonable carload minimum would have been 15,000 pounds. We further find that complainant received the shipments as recited in the foregoing statement of facts and paid charges thereon on the basis of the minimum herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amounts which it did pay and the amounts which it would have paid on the basis of the minimum herein found to have been reasonable; and that it is therefore entitled to an award of reparation as follows: From the St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway; and Charleston & Western Carolina Railway Company in the sum of \$300.45, with interest from September 3, 1910; from the St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway; and Georgia Railroad in the sum of \$8.22, with interest from February 24, 1910; and from the St. Louis & San Francisco Railroad Company and Central of Georgia Railway Company in the sum of \$14.15, with interest from February 24, 1910. The reduced minimum is still in force, and no order for the future is necessary.

#### AMENDMENT NO. 1.

By amendment No. 1 to the petition the complainant alleges that it was charged an unreasonable rate on a shipment of cotton-factory sweepings from Lindale, Ga., to Paducah, Ky.

On December 3, 1908, the complainant shipped via the lines of the Central of Georgia and Nashville, Chattanooga & St. Louis Railway companies from Lindale, Ga., to Paducah, Ky., on one bill of lading, 72 bales of cotton-factory sweepings, the aggregate weight of which was 20,084 pounds. The defendants loaded and transported the shipment in three different cars, and each lot was billed at 6,694 pounds. Charges in the aggregate sum of \$80.34 were collected, based on a rate of 40 cents. Complainant's contention is that a reasonable rate would not have exceeded 32 cents.

At the time the shipment moved the published rates on this commodity from Lindale to Paducah were 28 cents in carloads, minimum 15,000 pounds; less than carloads, 40 cents. Effective October 20, 1909, the less-than-carload rate was reduced to 32 cents. The 28 and 32 cent rates are still in force. The application of the less-than-carload rate results in a less charge than would the carload rate and minimum. At the hearing the defendants admitted that the less-than-carload rate should not have exceeded the carload rate by more than 4 cents.

Upon the record we find that the rate charged was unreasonable and that 32 cents would have been a reasonable rate. We further find that complainant made the shipment as alleged; that it paid



charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found to have been reasonable; and that it is therefore entitled to an award of reparation in the sum of \$16.08, with interest from December 10, 1908. As the rate found reasonable has been in force for more than two years, no order for the future is necessary.

AMENDMENT NO. 2.

Between September 28, 1908, and November 17, 1908, complainant made the following shipments from Augusta to Paducah, Ky., via the lines of the Charleston & Western Carolina, Western & Atlantic, Seaboard Air Line, and Nashville, Chattanooga & St. Louis railroads:

(a) September 28, 100 bales of cotton-factory sweepings, total weight 55,679 pounds. The shipment moved under one bill of lading and was loaded and transported in three cars, in two of which 34 bales each were loaded; in the third car 32 bales were loaded. Each of the 34-bale lots weighed 18,904 pounds, but was billed at minimum carload weight of 30,000 pounds and rate of 20 cents. Charges in the sum of \$60 were assessed upon each car. The 32-bale lot weighed 17,871 pounds, and charges in the sum of \$35.75 were paid, based upon a rate of 20 cents applied to the actual weight. The tariff in force at the time shipments moved named a rate of 20 cents in carloads from Augusta to Paducah, subject to a minimum weight of 30,000 pounds, and the charges stated were assessed in accordance therewith.

(b) November 5, 1908, under one bill of lading, 55 bales of cotton-factory sweepings, the total weight of which was 30,360 pounds. The shipment was loaded and transported in two cars, in one of which were loaded 31 bales weighing 15,792 pounds; in the other, 24 bales weighing 14,568 pounds. Each car was billed at actual weight and rate of 28 cents. Charges in the total sum of \$85.01 were collected. The specific rates in effect at time of shipment, however, were 20 cents on carloads, minimum weight 30,000 pounds, and 32 cents in less than carloads. Under the rules of the classification the shipment should have been billed at minimum carload weight and rate for the first car and actual weight and carload rate on the second car. There is, therefore, an undercharge of \$4.13.

(c) November 17, 1908, under one bill of lading, 55 bales of cotton-factory sweepings, the total weight of which was 30,510 pounds. The shipment was loaded and transported in two cars, in one of which were loaded 32 bales weighing 17,728 pounds; in the other, 23 bales weighing 12,782 pounds. Each car was billed at actual weight and rate of 28 cents. Charges in the total sum of \$85.43 were col-



lected. As in the case of the shipment described in the preceding paragraph, the specific rates in force were 20 and 32 cents in carloads and less than carloads, respectively, and under the rules of the classification governing loading there is an undercharge of \$0.13.

(d) On October 19, 1908, complainant shipped from Augusta to Hammond, Ind., via the Charleston & Western Carolina; Seaboard Air Line; Western & Atlantic; Nashville, Chattanooga & St. Louis; Louisville & Nashville; Evansville & Terra Haute; Chicago & Eastern Illinois; and Chicago Terminal Transfer railroads, 50 bales of cotton-factory sweepings of the total weight of 26,543 pounds. The shipment was made under one bill of lading and was loaded and transported in two cars, in one of which 41 bales weighing 21,730 pounds were loaded, and in the other 9 bales weighing 4,813 pounds. There was no joint through rate in effect, and the 41-bale lot was billed to Evansville, Ind., at a carload rate of 20 cents and minimum carload weight of 30,000 pounds. From Evansville to Hammond the shipment was billed at the carload rate of 12 cents, upon a minimum weight of 24,000 pounds. Upon this basis charges in the total sum of \$88.80 were collected. The 9 bales were billed at a weight of 4,813 pounds. Charges in the total sum of \$23 were collected, based on a rate of 32 cents to Evansville, plus a rate of 7½ cents from Evansville to Hammond, to which was added a switching charge of \$4 at destination. Had the shipment been properly billed under the rules of the classification in force at the time the 9 bales, weighing 4,813 pounds, should have been billed at the carload rate of 20 cents to Evansville and the any-quantity rate of 12 cents north thereof. There was, therefore, an overcharge of \$10.32 on the shipment.

(e) On November 14, 1908, from Augusta to Louisville, Ky., via the Charleston & Western Carolina; Seaboard Air Line; Western & Atlantic; Nashville, Chattanooga & St. Louis; and Louisville & Nashville railroads, 92 bales of cotton-factory sweepings, the total weight of which was 31,048 pounds. The shipment was covered by one bill of lading and was loaded and transported in two cars, in one of which were loaded 48 bales, which were billed at 24,000 pounds. In the other car were loaded the remaining 44 bales, the actual weight of which was 14,828 pounds. Charges were assessed on each lot apparently at a rate of 20 cents, total amount collected being \$77.65.

At the time this shipment moved the rate in carloads was 20 cents, subject to the southern classification, and charges should have been assessed at a rate of 20 cents upon a minimum carload weight of 30,000 pounds for the first car and the actual weight and carload rate on the second car. There is apparently an outstanding undercharge of \$12. However, the amount stated to have been collected

appears in a statement filed in the record as an exhibit by the complainant. The record contains no original documents relating to this shipment. The expense bills were not submitted in evidence nor was there any testimony offered as to the payment of the charges. No finding, therefore, can be made in respect of this shipment.

(f) On December 4, 1908, from Augusta to St. Louis, Mo., via the Charleston & Western Carolina; Seaboard Air Line; and Mobile & Ohio railroads, 110 bales of cotton-factory sweepings, the total weight of which was 61,276 pounds. The shipment was covered by one bill of lading and was loaded and transported in four cars, into which were loaded 16, 39, 21, and 34 bales, respectively. The record does not show the actual weight of the respective lots, but each of the four shipments was billed at a minimum carload weight of 30,000 pounds and upon each was collected charges in the amount of \$81, based on a rate of 27 cents, which was the carload commodity rate lawfully in force at the time.

Under the classification rule before referred to, the first cars should have been filled and the part lot loaded in the last car should have been billed at actual weight and rate of 27 cents.

(g) On October 8, 1908, complainant shipped from Augusta to Milwaukee, Wis., via the Charleston & Western Carolina; Seaboard Air Line; Western and Atlantic; Nashville, Chattanooga & St. Louis; Louisville & Nashville; Evansville & Terre Haute; Chicago & Eastern Illinois; and Chicago, Milwaukee & St. Paul railroads, 50 bales of cotton waste, the total weight of which was 30,277 pounds. The shipment was made under one bill of lading and was loaded and transported in two cars, in one of which 27 bales, weighing 17,307 pounds, were loaded, and charges in the sum of \$98.17 collected, based, apparently, on a rate of 52 cents to Chicago, plus 5 cents from Chicago to Milwaukee. On the remaining 23 bales, weighing 12,970 pounds, charges in the sum of \$71.33 were collected, at a joint through rate of 55 cents.

At the time the shipments moved there was a joint through rate on cotton waste from Augusta to Milwaukee of 50 cents, minimum carload weight 24,000 pounds, and an any-quantity rate of 55 cents. Upon basis of the carload rate and minimum weight the charges would have been \$184.85, but at actual weight and the any-quantity rate the charges would have been \$166.52. The complainant was charged the sum of \$169.50. There is, therefore, an overcharge of \$2.98.

(h) September 26, 1908, complainant shipped from Augusta to Rock Island, Ill., via the Charleston & Western Carolina; Seaboard Air Line; Western & Atlantic; Nashville, Chattanooga & St. Louis; Illinois Central; and Chicago, Burlington & Quincy railroads, 292 bales of cotton waste, the total weight of which was 27,734 pounds.



The shipment was covered by one bill of lading and was loaded and transported in two cars, in the first of which 234 bales were loaded and billed at the carload minimum weight of 24,000 pounds and rate of 50 cents. In the other car 58 bales were loaded and billed at actual weight of 5,510 pounds and rate of 50 cents. Charges in the total sum of \$147.55 were collected on the two lots.

At the time this shipment moved there was a joint rate of 50 cents in carloads, minimum carload weight 24,000 pounds, and an any-quantity rate of 55 cents. Under the tariffs in force the shipment was correctly charged.

The tariffs under which these shipments moved were subject to the rules and regulations of the southern classification, which provided minimum weight and loading rules as follows:

24 (c) Unless otherwise specified in the classification, the minimum carload weight of all articles shall be 24,000 pounds; or 12 tons when the rate applies per net or per gross ton.

When a minimum carload weight of more than 20,000 pounds is specified, such minimum weight will apply regardless of the length of car used.

(d) When a lot of freight (not in bulk and not including live stock), the standard minimum carload weight of which is 20,000 pounds or more, is offered for shipment on one day, by one consignor, for one consignee and destination, in quantities in excess of the amount that can be loaded into one box car, \* \* \* the following rules will apply in assessing charges:

The first car and all succeeding cars, except the last, must be fully loaded and charged for on basis of carload rate and at actual weight, but at not less than the established minimum weight per car, according to length for each car used.

The remainder of the consignment, if loaded in a box car, shall be charged for at actual weight and at the carload rate \* \* \*.

In only two instances were the shipments covered by this amendment correctly charged under the tariffs and classification rules in force at the time of shipment. The complainant in its petition alleged that the prescribed minimum was unjust and unreasonable. No evidence was offered in proof of this general allegation, but the complainant at the hearing attacked the reasonableness of the rule above quoted. Examination of the reissues of the classification shows that effective March 20, 1909, in southern classification No. 11, the rule was amended as follows:

(e) When a shipment requires a car, \* \* \* of greater length than can be furnished by the carrier, two smaller cars may be furnished and revenue assessed upon basis of actual weight of the shipment, but not less than the carload minimum established by the size of the car required.

We find that the rule under which charges were exacted was unreasonable in that it provided for the application of minimum weight on each car except the last, and that a reasonable basis would have been that since provided for in rule 24 (e). We further find that complainant made the shipments described in the



foregoing statement of facts and paid charges thereon on the basis herein found unreasonable; that it has been damaged to the extent that the charges assessed exceeded those which would have been assessed had rule 24 (e) herein found reasonable been applied; and that it is therefore entitled to an award of reparation against the carriers participating in the transportation of the shipments described in the preceding paragraphs lettered (a) to (h), as follows:

(a, b, c) Against the Charleston & Western Carolina Railway; Western & Atlantic Railroad; Seaboard Air Line Railway; and Nashville, Chattanooga & St. Louis Railway companies in the several sums of \$44.39, \$24.29, and \$24.41, with interest from November 23, 1908.

(d) Against the Charleston & Western Carolina Railway; Seaboard Air Line Railway; Western & Atlantic Railroad; Nashville, Chattanooga & St. Louis Railway; Louisville & Nashville Railroad; Evansville & Terre Haute Railroad; Chicago & Eastern Illinois Railroad; and Chicago Terminal Transfer Railroad companies in the sum of \$19.95, with interest from November 13, 1908.

(f) Against the Charleston & Western Carolina Railway; Seaboard Air Line Railway; and Mobile & Ohio Railroad companies in the sum of \$158.55, with interest from May 26, 1909.

(g) Against the Charleston & Western Carolina Railway; Seaboard Air Line Railway; Western & Atlantic Railroad; Nashville, Chattanooga & St. Louis Railway; Louisville & Nashville Railroad; Evansville & Terre Haute Railroad; Chicago & Eastern Illinois Railroad; and Chicago, Milwaukee & St. Paul Railway companies in the sum of \$18.11, with interest from November 1, 1908.

(h) Against the Charleston & Western Carolina Railway; Seaboard Air Line Railway; Western & Atlantic Railroad; Nashville, Chattanooga & St. Louis Railway; Illinois Central Railroad; and Chicago, Burlington & Quincy Railroad companies in the sum of \$8.88, with interest from October 8, 1908.

The amounts awarded include overcharges noted; it is understood that the undercharges referred to may be waived.

#### AMENDMENT NO. 3.

On May 26, 1909, complainant shipped from Augusta to Clifton, Ariz., 190 bales of cotton waste, the total weight of which was 36,000 pounds. The shipment moved under one bill of lading and was loaded and transported in two cars, in the first of which 120 bales weighing 24,000 pounds were loaded, and in the second, 70 bales weighing 12,000 pounds. The cars moved via the Memphis gateway over the Charleston & Western Carolina; Seaboard Air Line; Western & Atlantic; Nashville, Chattanooga & St. Louis; Iron Mountain; Texas & Pacific; El Paso & Southwestern; and Arizona & New Mexico railroads. It is impossible to determine from an examination of the

destination expense bills submitted in evidence just how the transportation charges were computed, or, in fact, exactly what amount was collected. However, the complainant alleges, and it seems to be agreed between the parties, that the charges aggregated \$693.42.

At the time the shipment moved there was no joint through rate in force via the route over which it was forwarded. It is alleged that there was in force over the lines of certain of the defendants a joint through rate of \$1.71 per 100 pounds subject to the western classification minimum of 30,000 pounds, but that the Charleston & Western Carolina Railway was not a party to the tariff naming that rate, although it subsequently concurred therein. The through rate in force over the route of movement was a combination rate of \$1.89 per 100 pounds, made up of 30 cents from Augusta to Memphis and \$1.59 from Memphis to Clifton. East of the gateway the shipment was subject to a carload minimum weight of 24,000 pounds; west thereof, it was subject to the western classification, which prescribed a carload minimum weight of 30,000 pounds.

The complainant alleges that the through rate and the western classification minimum were each unreasonable, and claims reparation in the sum of \$77.82, but upon what grounds is not specifically stated in the petition. At the hearing, however, it claimed that on the rate of \$1.71 applied on the actual weight of 36,000 pounds it would be entitled to a refund of \$77.82. The claimant's witness testified that 30,000 pounds of waste could not be loaded in a standard 36-foot car. Defendants introduced evidence to show how, under rules and instructions for loading issued by them, 52 bales of cotton might be loaded in a 36-foot car. As cotton, compressed, weighs 500 to 600 pounds per bale, it would seem to follow that a car loaded with 52 bales would weigh from 26,000 to 31,200 pounds, depending upon the weight of the bales. Defendants also show that a mill in Charlotte, N. C., with machines capable of turning out bales  $4 \times 4 \times 2\frac{1}{2}$  feet, with density 18 to 20 pounds per cubic foot, was able to load in a standard 36-foot car 56 bales of waste weighing 34,234 pounds. Complainant's shipment consisted of 190 bales; upon basis of an aggregate weight of 36,000 pounds these bales must have averaged 189 pounds.

It is obvious that the number of bales and the weight of cotton waste that can be loaded into a car depend upon the size of bales and the degree of compression. Upon the indefinite and unsatisfactory evidence in the record we can make no finding with respect to the reasonableness either of the rate or of the minimum weight upon the shipment involved. The record shows that upon the basis of the carload minimum and rate in force at time of shipment there is an outstanding undercharge of \$82.38. The complaint covered by the amendment will be dismissed.



No. 3342.  
RAILROAD COMMISSION OF OREGON  
*v.*  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted May 17, 1911. Decided June 8, 1912.*

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Through rates on less-than-carload shipments to points south of Portland, Oreg., in the Willamette Valley from Missouri River and territory east thereof had for a number of years been constructed by adding to rates from said eastern territory to Portland, an arbitrary of 10 cents per 100 pounds from Portland to destination. On March 22, 1910, a new basis was adopted, the through rates being made by combination of the transcontinental rates to Portland and the local rates from Portland to destination; *Held*, That the rates so made up of a combination of the transcontinental rates and the local rates are unjust and unreasonable. Reasonable rates prescribed for the future.

*Hewitt & Sox* for complainant.

*H. A. Scandrett* and *W. D. Fenton* for Southern Pacific Company.

*Carey & Kerr* for Northern Pacific Railroad Company.

*Edward M. Cousin* for interveners.

*J. N. Teal* for Transportation Committee of Portland.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This petition was filed by the Railroad Commission of Oregon in behalf of the shippers of the Willamette Valley in Oregon, and assails an increase in the rates for the transportation of less-than-carload quantities of freight from points on the Missouri River and east thereof to points on the Southern Pacific Company's lines in Oregon, known as the East Side, West Side, and Yamhill divisions, in the Willamette Valley. The petition of the railroad commission did not in terms seek reparation, but certain firms and corporations engaged in business in the territory affected by the advances have intervened in the case for the purpose of securing reparation.

The rates involved are the less-than-carload rates on the first four classes from eastern defined territory to various points in the Willamette Valley. For a number of years the rates to those points were made by adding 10 cents to the transcontinental rates to Portland,



this charge being a blanket arbitrary to the points involved in the complaint. The 10-cent arbitrary was assessed regardless of classification, but it did not apply on business originating in California or Nevada, being confined to transcontinental traffic. By a tariff effective March 22, 1910, a new basis was adopted and the rates were made up of a combination of the westbound transcontinental class rates to Portland and the local rates from Portland to destination, ranging from 5 to 32 cents per 100 pounds. This combination graded the rates between Portland on the north, and Albany, Corvallis, and Airlie on the East Side, West Side, and Yamhill divisions, respectively, whereas on the basis formerly in effect the charges to those points for the service from Portland were blanketed.

The advances having occurred since the 1st of January, 1910, the carriers, under the statute, assumed the burden of justifying the reasonableness of the new rates. The principal witness for the defendants testified that the 10-cent arbitrary from Portland to Albany and Corvallis and intermediate points had been abolished and the rates increased because "it was discrimination between localities; it was a discrimination unjust as between traffic; it was an unreasonably low rate and was not justified by existing conditions."

In support of defendants' contention that the rates were readjusted for the purpose of eliminating unjust discrimination which resulted from application of the arbitrary rate, it is averred that there was an unjust discrimination between localities, because, while the arbitrary rate applied from Portland on goods that were carried direct to Willamette Valley points from the east, it did not apply on those same goods when shipped to Portland and thence reshipped, and therefore did not afford an opportunity for a Portland merchant to compete on an equality with a merchant in the east. The arbitrary rate is also said to have been unjustly discriminatory because it did not apply to any point south of Albany, while it did apply to a point 20 miles from Portland as well as to a point 80 miles from Portland, being blanketed to Albany on the East Side, Corvallis on the West Side, and Airlie on the Yamhill division.

With regard to the assertion that the old adjustment was discriminatory in that the through charge amounted to less than the combination of rates based upon Portland, we do not think that the criticism is justified on principle. Due in part to the elimination of terminal services in a through movement, it is the rule rather than the exception that through charges are lower than the combination of intermediate rates. However, with regard to the allegation that the rates were discriminatory in that they constituted a blanket adjustment, both as to points of destination and the character of

the traffic, ignoring entirely distance and well-established principles of classification, the arbitrary adjustment was doubtless open to criticism.

The contention of the defendants that the former adjustment was unreasonably low appears to rest largely upon the value of the statement as an expression of expert opinion and is not verified to any extent by detailed evidence as to the cost of service or by other evidence of a similar character which would aid the Commission in passing upon the real issue involved, namely, the reasonableness of the new rates in and of themselves.

Much of the testimony in this case is devoted to the question of competition by water carriers at the Pacific coast terminals and on the Willamette River. It is asserted that the 10-cent arbitrary, which was in effect for some years, was brought about by severe competition on the river which resulted in the annihilation of competition by water. The evidence shows that the rates during this period reached a very low stage, it appearing that at one time the charge on the river was but \$1 per ton, 50 cents of which was paid by the boats for lockage facilities at Oregon City. It is maintained, in effect, by defendants that the rates involved are a combination of two rates, each of which is a water-compelled rate. In previous proceedings the Commission has investigated the rates to Pacific coast terminals, of which Portland is one, and has decided that many such rates are influenced by water competition, and on that theory has justified the making of lower rates to coast cities than to territory not so affected. It has also been found that this is not true as to the class rates, and those rates to the Pacific coast terminals have recently been increased. *City of Spokane v. Nor. Pac. Ry. Co.*, 21 I. C. C., 400, 417, and cases there cited. However, with regard to the assertion that local rates from Portland to points in the Willamette Valley are controlled by competition of water carriers on the Willamette River, it will be necessary to go briefly into the history of these rates in order that a proper understanding of the present situation may be reached.

The Willamette Valley is about 150 miles long, from 10 to 40 miles wide, and navigation extends up the river to Albany, a point about 100 miles from Portland. The valley is a fertile and prosperous one, containing a number of towns and cities with populations ranging from 3,000 to 15,000. In years past there has existed active competition between the boat and rail lines for traffic destined to and from these river towns. The height of this competition is said to have been in the year 1895, when there were five boat lines operating on the river and its tributaries; while to-day only one company



is in operation south of Oregon City, a point 15 miles south of Portland. In addition to the rail lines leading south from Portland there has been in operation for a number of years a rail line leading from Yaquina on the coast of Oregon to Corvallis and Albany, and in years past this railroad ran a line of steamships from Yaquina Bay to San Francisco, which made a through route to San Francisco. These competitive conditions existed for many years in the Willamette Valley, but it appears from the testimony that since 1902 they have practically ceased.

The record indicates that the Oregon Railroad & Navigation Company took its boat off the upper river about five years ago. The boat on the Yamhill River was taken off about a year later, and the company is not now operating any boats on the upper river. It is testified "Five or six years ago there was an adjustment of rates between our company (one of the boat lines) and the O. R. & N.; they were put on an equal basis—living rates." It is further testified that the boat lines now get practically no transcontinental traffic whatever. The boat line, by agreement, charges 25 cents a ton less than the rail carriers. It is averred that the line of railroad from the coast to Albany has been absorbed by the Southern Pacific, and the latter in turn is dominated by the Union Pacific through its controlled line, the Oregon Railroad & Navigation Company, now known as the Oregon-Washington Railroad & Navigation Company.

In addition to the Southern Pacific there are in the valley two electric systems, Oregon City being reached by the Portland Railway & Light Company's line, while Salem and Woodburn are served by the Oregon Electric Railway. That these lines are actively competing for any of the traffic involved in this case does not satisfactorily appear of record.

Another feature with regard to the elimination of competition which is insisted upon by the complainants involves the rate adjustment which has effectively stopped the flow of commerce into the valley via the Shasta route running northward through California. It is stated that before the Southern Pacific Company became a part of the so-called Harriman lines, traffic moved from the east via the Sacramento gateway, as well as through Portland, and there was active competition between the Southern Pacific and the Oregon Railroad & Navigation Company for this business. Since the merger of these lines the rates via the Shasta route have been made considerably higher than via Portland. Apart from the matter of the elimination of this competition, the difference in distance over the two routes is approximately 437 miles in favor of the Portland



gateway, and hence an adjustment of rates which accords a lower basis for the northern route than via the southern route is not an unnatural one.

Upon the whole record it seems clear that whereas the rates to points in the valley were at one time controlled by water and rail competition, this can hardly be said of them at the present time, certainly not to the extent that was formerly the case.

We find upon examination of the tariffs that the local rates from Portland to Willamette Valley points exactly equal the rates between said points applicable upon transcontinental business involved herein, but no issue is presented in this proceeding involving the local rates from Portland to Willamette Valley destinations. Those rates are intrastate and with them we are not concerned.

It is not unusual in the case of a transportation service over very long distances to points located within 100 miles of each other, as in this instance, that the differential in the freight charge entirely disappears, and it is averred that for a similar transcontinental movement to points north of Portland, the Portland rates are applied. The defendants assert, however, that the rate situation north of Portland is controlled by the competition of the northern rail lines. There is no requirement upon the carriers to publish rates which do not take into consideration differences in distance or classification, and where the rates are based upon a classification of commodities and graded to each particular point of destination the only requirement of the statute is that the rates shall in and of themselves be just and reasonable.

Upon consideration of the record in this case we are of opinion and find that the present rates of transportation applying from Portland as part of the through rates on less-than-carload shipments to traffic moving under the class rates upon the first four classes from eastern defined territory via Portland to points in the Willamette Valley involved in this complaint are unjust and unreasonable in so far as they exceed those hereinafter set forth in the column "future rates," and an order will be entered requiring the establishment for the future of rates not in excess of those stated herein.

## EAST SIDE DIVISION.

Rates from Portland on shipments from eastern defined territory to—	Distance.	Future rates, in cents per 100 pounds.				Present rates, in cents per 100 pounds.			
		1st.	2d.	3d.	4th.	1st.	2d.	3d.	4th.
	<i>Miles.</i>								
Car Shops, Oreg. ....	3.4	7	6	5	5	10	9	7	6
Ladd, Oreg. ....	4.4	7	6	5	5	10	9	7	6
Willsburg, Oreg. ....	5.4	7	6	5	5	10	9	7	6
Milwaukee, Oreg. ....	6.9	7	6	5	5	13	11	9	8
Haskell, Oreg. ....	9.9	7	6	5	5	14	12	10	8
Laidlaw, Oreg. ....	10.5	10	8	6	5	15	13	11	9
Clackamas, Oreg. ....	10.9	10	8	6	5	16	14	11	9
Paper Mill, Oreg. ....	13.7	10	8	6	5	17	15	12	9
Oregon City, Oreg. ....	15.4	10	8	6	5	18	15	12	9
Pulp, Oreg. ....	18.0	10	8	6	5	19	15	12	9
Coalca, Oreg. ....	20.1	13	10	8	6	19	15	12	9
New Era, Oreg. ....	20.7	13	10	8	6	19	15	12	9
Canby, Oreg. ....	24.0	13	10	8	6	21	17	13	10
Barlow, Oreg. ....	25.6	13	10	8	6	22	19	16	13
Aurora, Oreg. ....	27.7	13	10	8	6	23	19	16	14
Hubbard, Oreg. ....	32.1	15	11	9	7	24	21	18	15
Hofer, Oreg. ....	34.7	15	11	9	7	24	21	18	16
Woodburn, Oreg. ....	35.7	15	11	9	7	24	21	18	16
Gervais, Oreg. ....	38.8	15	11	9	7	24	21	18	16
Brooks, Oreg. ....	44.0	17	13	11	9	24	21	18	16
Chemawa, Oreg. ....	47.6	17	13	11	9	23	20	18	16
Fair Grounds, Oreg. ....	50.3	17	13	11	9	24	21	18	16
Tile Works, Oreg. ....	50.6	17	13	11	9	24	21	18	16
Salem, Oreg. ....	52.6	17	13	11	9	24	21	18	16
Reform School, Oreg. ....	57.4	17	13	11	9	25	22	18	17
Turner, Oreg. ....	60.2	19	15	13	11	25	22	19	17
Marion, Oreg. ....	66.6	19	15	13	11	26	23	20	18
Jefferson, Oreg. ....	71.2	20	16	14	12	27	23	20	18
Millersburg, Oreg. ....	75.3	20	16	14	12	27	24	20	18
Albany, Oreg. ....	79.9	20	16	14	12	28	25	21	19

## WEST SIDE DIVISION.

Rates from Portland on shipments from eastern defined territory to—	Distance.	Future rates, in cents per 100 pounds.				Present rates, in cents per 100 pounds.			
		1st.	2d.	3d.	4th.	1st.	2d.	3d.	4th.
	<i>Miles.</i>								
Bertha, Oreg. ....	5.6	10	9	7	5	15	14	11	8
Shattuck, Oreg. ....	7.8	10	9	7	5	15	14	11	8
Olsen, Oreg. ....	8.3	10	9	7	5	15	14	11	8
Raleigh, Oreg. ....	9.2	10	9	7	5	15	14	11	8
Beaverton, Oreg. ....	11.3	11	9	7	5	15	14	11	8
St. Marys, Oreg. ....	12.6	11	9	7	5	15	14	12	8
Reedville, Oreg. ....	15.9	11	9	7	5	15	14	13	8
Witch Hazel, Oreg. ....	17.2	11	9	7	5	15	14	13	8
Hare, Oreg. ....	17.8	11	9	7	5	15	14	13	8
Newton, Oreg. ....	19.0	11	9	7	5	15	14	13	8
Hillsboro, Oreg. ....	20.6	13	11	8	6	15	14	13	8
Cornelius, Oreg. ....	24.1	13	11	8	6	16	15	13	8
Forest Grove, Oreg. ....	26.3	13	11	8	6	18	16	14	8
Dilley, Oreg. ....	28.1	13	11	8	6	19	16	14	12
Gaston, Oreg. ....	32.0	15	13	11	9	21	18	14	12
Wapato, Oreg. ....	34.2	15	13	11	9	22	18	14	12
Cove Orchard, Oreg. ....	36.8	15	13	11	9	24	19	15	12
North Yamhill, Oreg. ....	39.3	15	13	11	9	24	19	15	12
Carlton, Oreg. ....	42.7	17	14	11	9	24	19	15	12
St. Joseph, Oreg. ....	47.0	17	14	11	9	24	19	15	12
McMinnville, Oreg. ....	50.0	17	14	11	9	24	19	15	12
Seitters, Oreg. ....	51.0	17	14	11	9	24	19	15	12
Whiteson, Oreg. ....	54.2	17	14	12	10	25	20	16	13
Amity, Oreg. ....	56.8	17	14	12	10	25	21	17	14
McCoy, Oreg. ....	62.1	19	15	13	11	26	22	18	15
Crowley, Oreg. ....	66.6	19	15	13	11	27	23	19	17
Derry, Oreg. ....	70.0	20	16	14	12	27	24	19	17
Independence, Oreg. ....	75.7	20	16	14	12	28	25	21	19
Parker, Oreg. ....	81.0	20	16	14	12	28	25	21	19
Suver, Oreg. ....	83.0	20	16	14	12	28	25	21	19
Wellsdale, Oreg. ....	86.1	20	16	14	12	28	25	21	19
Calloway, Oreg. ....	88.7	20	16	14	12	28	25	21	19
Corvallis, Oreg. ....	96.5	20	16	14	12	28	25	21	19

## YAMHILL DIVISION.

Rates from Portland on shipments from eastern defined territory to—	Distance.	Future rates, in cents per 100 pounds.				Present rates, in cents per 100 pounds.			
		1st.	2d.	3d.	4th.	1st.	2d.	3d.	4th.
	<i>Miles.</i>								
Fulton, Oreg.....	3.0	5	5	5	5	5	5	5	5
Riverdale, Oreg.....	4.7	5	5	5	5	5	5	5	5
Rivera, Oreg.....	5.2	5	5	5	5	5	5	5	5
Oswego, Oreg.....	7.0	5	5	5	5	5	5	5	5
Bryant, Oreg.....	10.3	10	8	6	5	13	11	9	8
Cook, Oreg.....	11.1	10	8	6	5	13	11	9	8
Galbreath, Oreg.....	12.1	10	8	6	5	15	13	11	9
Tualatin, Oreg.....	12.8	10	8	6	5	16	14	11	9
Herman, Oreg.....	14.1	10	8	6	5	16	14	12	10
Gore, Oreg.....	14.6	10	8	6	5	17	15	12	10
Cipole, Oreg.....	15.1	10	8	6	5	17	15	12	10
Ford, Oreg.....	15.8	10	8	6	5	17	15	12	10
Sherwood, Oreg.....	17.2	10	8	6	5	18	16	13	11
Middleton, Oreg.....	18.7	10	8	6	5	19	16	14	11
Votaw, Oreg.....	20.1	13	11	9	7	20	17	14	11
Frank, Oreg.....	20.4	13	11	9	7	20	17	14	11
Rex, Oreg.....	21.7	13	11	9	7	20	17	14	11
Springbrook, Oreg.....	24.0	13	11	9	7	21	17	14	11
Newberg, Oreg.....	26.0	13	11	9	7	21	17	14	11
Dundee Junction, Oreg.....	28.5	13	11	9	7	21	18	15	12
Dayton, Oreg.....	32.4	15	13	11	9	21	18	15	12
Oak Lawn, Oreg.....	33.2	15	13	11	9	21	18	15	12
Lafayette, Oreg.....	35.0	15	13	11	9	21	18	15	12
Holmes, Oreg.....	45.2	17	15	13	11	25	21	17	14
Briedwell, Oreg.....	47.5	17	15	13	11	26	22	18	15
Harrison, Oreg.....	48.4	17	15	13	11	26	22	18	15
Broadmead, Oreg.....	50.5	19	17	15	13	26	22	18	15
Perrydale, Oreg.....	53.2	19	17	15	13	26	22	18	15
Ballston, Oreg.....	53.7	19	17	15	13	27	23	19	17
Smithfield, Oreg.....	57.6	19	17	15	13	27	23	19	17
Sheridan, Oreg.....	58.0	19	17	15	13	27	23	19	17
Polk, Oreg.....	60.5	20	18	16	14	27	24	19	17
Dallas, Oreg.....	63.7	20	18	16	14	27	24	19	17
Cochrane, Oreg.....	67.9	20	18	16	14	28	25	21	19
Monmouth, Oreg.....	70.8	22	19	17	15	28	25	22	20
Luckiamute, Oreg.....	74.6	22	19	17	15	29	26	24	20
Simpson, Oreg.....	77.4	22	19	17	15	31	27	25	21
Airlie, Oreg.....	80.0	22	19	17	15	32	27	25	21

With regard to reparation, the Railroad Commission of Oregon, the complainant in the case, in the nature of things could not have embodied a claim for reparation, as it suffered no damage by reason of the rates which it has attacked. *National Refining Co. v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 389. At the hearing, however, a number of business establishments located at the points affected by the rates involved intervened and sought reparation. The objection of defendants to the enlargement of the issue was sustained, and therefore no award of reparation can be entered in this proceeding. The rate adjustments to and from the Pacific coast terminals and in the intermountain territory have been and are being revised and readjusted under proceedings before us, and we do not regard the instant case as one for reparation.

An order will be entered accordingly.

24 I. C. C.



No. 4116.  
PITTSBURGH VEIN OPERATORS' ASSOCIATION OF OHIO  
v.  
PENNSYLVANIA COMPANY ET AL.

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No. 4116 (Sub-No. 1).  
SAME  
v.  
WHEELING & LAKE ERIE RAILROAD COMPANY ET AL.

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*Submitted April 6, 1912. Decided June 6, 1912.*

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Rate of 85 cents per net ton applicable on bituminous coal in carloads from points in the Pittsburgh vein No. 8 coal district of Ohio to the Lake Erie ports of Huron and Cleveland, Ohio, when for transshipment by vessel to points without the state of Ohio, found to have been unreasonable, and rate of 75 cents prescribed for the future.

*M. B. & H. H. Johnson, T. H. Hogsett and W. D. Turner* for complainant.

*W. M. Duncan and F. A. Durban* for Wheeling & Lake Erie Railroad Company and *B. A. Worthington*, receiver thereof.

*A. P. Burgwin, W. M. Duncan, and F. A. Durban* for Pennsylvania Company and Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

These two cases, which have been consolidated and conducted as one proceeding, involve the rate of 85 cents per net ton applied for the transportation in carloads of so-called lake-cargo coal, bituminous, from the Pittsburgh vein No. 8 coal district of Ohio to the Lake Erie ports of Huron and Cleveland, Ohio, for transshipment by vessel on the great lakes to points without the state of Ohio. The complainant is a voluntary association of 33 coal operators in the No. 8 district, and alleges, by petitions, filed May 24, 1911, that this rate is unreasonable *per se*, and, by comparison with the rates on lake-coal traffic from the West Virginia and Kentucky coal districts, is unjustly discriminatory,

24 I. C. C.

gives an undue preference and advantage to the latter districts, and subjects the No. 8 district to undue prejudice and disadvantage. The specific allegations of the complaint are similar to those advanced in the case of *Boileau v. P. & L. E. R. R. Co.*, 22 I. C. C., 640, which brought in issue the reasonableness of the coal rate from the Pittsburgh, Pa., district to Ashtabula Harbor, Ohio.

The No. 8 district contains what is known as the Pittsburgh No. 8 vein of coal and includes the greater part of the counties of Jefferson, Harrison, and Belmont, Ohio. This vein is a part of the Pittsburgh bed of coal, which extends into southwestern Pennsylvania, northern West Virginia, and eastern Ohio, and is estimated to underlie an area of about 500,000 acres, including undeveloped acreage in Monroe county, Ohio, and to contain about two and a half billion tons of coal. Of this land, about 154,000 acres are said to be in properties now being exploited, requiring about 15,000 miners and mine laborers in the operation of the mines. Practically all of the development of the No. 8 field has taken place since 1900, there having been not more than four or five mines in operation prior to that year.

The district adjoins the Pittsburgh district on the west and the lake-coal movement therefrom, so far as the defendants are concerned, is over the Wheeling & Lake Erie Railroad to Huron and the Pennsylvania lines to Cleveland. The Wheeling & Lake Erie also reaches Cleveland, but it has practically no facilities for handling lake coal through that gateway. Another route is via the Baltimore & Ohio Railroad to the port of Lorain. This carrier, however, is not a defendant, for the reason, as stated by complainant, that it "did not feel able to spend the time and bear the expense incident to a proper preparation and presentation of evidence with respect to the Baltimore & Ohio."

Here, as in the *Boileau case*, the complainant's charge of unjust discrimination is based upon the concert of action between the roads serving the Ohio, West Virginia, and Kentucky fields in fixing rates therefrom. As the defendants do not reach either of the latter two fields, it is not contended that there is direct discrimination by any carrier against one locality on its line in favor of another. In the *Boileau case* the Commission stated that "it is a matter of record that the custom had obtained for many years for the representatives of initial carriers of lake-cargo coal in the Pittsburgh, Ohio, and West Virginia districts to meet and determine what rates should prevail from the mines to the Lake Erie ports." The allegation is that the rate from the No. 8 district is not the result of normal competition between the carriers serving the rival districts, but was fixed so as to discriminate against the Ohio district. Following is a comparison of the rates and average distances (not weighted average) from the

various districts, and the ton-mile revenue earned under such rates since 1902:

Year.	District.	Distance.	Rate per net ton.	Ton-mile revenue.	Differential in favor of Ohio No. 8.
		Miles.	Cents.	Mills.	Cents.
1902.....	No. 8 of Ohio via W. & L. E. R. R. to Huron.	146	70	4.80	.....
1903, 1904, 1905, 1906.....	do.	146	80	5.48	.....
1907, 1908, 1909, 1910, 1911.....	do.	146	85	5.82	.....
1902.....	No. 8 of Ohio via Pennsylvania lines to Cleveland.	135	70	5.18	.....
1903, 1904, 1905, 1906.....	do.	135	80	6.00	.....
1907, 1908, 1909, 1910, 1911.....	do.	135	85	6.29	.....
1902.....	Pittsburgh, Pa.	160	73	4.56	3
1903, 1904, 1905, 1906.....	do.	160	83	5.19	3
1907, 1908, 1909, 1910, 1911.....	do.	160	88	5.50	3
1902.....	Fairmont, W. Va.	248	81½	3.30	11½
1903, 1904, 1905, 1906.....	do.	248	91½	3.70	11½
1907, 1908, 1909, 1910, 1911.....	do.	248	96½	3.90	11½
1902.....	Kanawha-Thacker, W. Va.	400	82	2.05	12
1903, 1904, 1905, 1906.....	do.	400	92	2.30	12
1907, 1908, 1909, 1910, 1911.....	do.	400	97	2.42	12
1902.....	Pocahontas-New River, W. Va.	434	97	2.23	27
1903, 1904, 1905, 1906.....	do.	434	107	2.46	27
1907, 1908, 1909, 1910, 1911.....	do.	434	112	2.58	27

Under this adjustment of rates, the tonnage of lake-cargo coal from these fields has increased as follows:

State.	District.	1903	1911	Percentage of increase.
Ohio.....	No. 8.....	536,738	1,926,304	259
Pennsylvania.....	Pittsburgh.....	5,460,215	10,063,106	84
West Virginia.....	Fairmont.....	1,119,288	1,784,279	59
Do.....	Kanawha.....	357,994	3,107,532	768
Do.....	Thacker.....	73,038	380,619	421
Do.....	Pocahontas.....	295,894	1,324,192	347
Do.....	New River.....	35,421	639,217	1,720

In March, 1909, the interested lines decided to increase the differentials of the West Virginia fields by advancing the Pocahontas and Kanawha rates 9½ cents each and the Fairmont 3½ cents. This proposed change was first enjoined by a court and later suspended by this Commission. In our report in the *West Virginia Lake-Coal case*, 22 I. C. C., 604, decided March 11, 1912, we held that the advances from the Kanawha and Pocahontas fields, so far as they applied from points on the line of the Norfolk & Western, might be made, but that the proposed rates from points on the Baltimore & Ohio, Chesapeake & Ohio, and Kanawha & Michigan railways, should not become effective. In the *Boileau case* the Commission ordered the Pittsburgh district rate reduced from 88 cents to 78 cents, to become effective on or before May 1, 1912. The effect of the order in the *Boileau case* was to give the Pittsburgh district a differential under the No. 8 district of 7 cents instead of 3 cents over the No. 8 district as was formerly maintained for 10 years.



Pointing to the increase in the rate from the No. 8 district, which amounts to 25 per cent for the past 10 years, the complainant contends that no one will suggest that there has been any corresponding increase in the cost of hauling this commodity. The defendants submit, however, that the heavy gain in tonnage in the face of the alleged competition with West Virginia and Kentucky shows conclusively that the No. 8 district has always been able, and probably will continue to hold its own in the markets of the northwest in competition with the West Virginia lake coal. In reply to this, the complainant refers to the evidence of coal operators in the district that they are—

forcing their coal across the lakes in some instances at cost and in other instances at a loss for the sole purpose of holding their trade in the northwest and keeping their mines and miners employed in the hope and belief that better conditions are to be created in the future through a more equitable adjustment of their rates. Under these circumstances it seems a mockery, indeed, to contend that the very coal tonnage which they are forcing up the lakes at a loss should be referred to as a reason why they are not entitled to a reduction in the transportation rate.

The record supports this statement. There is no doubt that the wages, standard of living, and cost of production in the No. 8 district are higher than in the West Virginia fields. While the before-shown increase in tonnage considered alone tends to sustain defendants' view, a comparison with the tonnage from all the West Virginia districts during the same period shows that the average increase in the latter districts has been 665 per cent, as against 259 per cent from the No. 8 district. In this connection the following comment by the Commission in *Boileau v. P. & L. E. R. R. Co.*, *supra*, is applicable in the instant case:

Whatever weight it may be permissible under the statute to give to considerations of this kind in the determination of a question like that presented here, it would seem that wages of miners and their standard of living should be kept in view, and that great issues affecting them should not be decided without at least bringing their interests into the horizon of consciousness. Counsel for defendants argued that the profits of operators should be considered in this case. We interpret his argument to mean that all the conditions of every kind whatsoever surrounding this coal industry, which may be directly or indirectly affected by the rates, such as the profits of the operators and carriers, the wages and standard of living of the miners and railway employees, may be rightfully considered. Whatever legal limitations may be imposed upon this view by the act to regulate commerce as at present interpreted, from the point of view of public policy and humanity, considerations like those adverted to by counsel most assuredly should not be ignored.

The similarity of the situation of the No. 8 operators to that of the Pittsburgh operators is commented upon in complainant's brief. It states on page 4:

The West Virginia and Pittsburgh cases having been heard by your Commission prior to the time of the hearing of the present case, and extensive testimony having been introduced in those cases, and clear and comprehensive briefs and arguments by

eminent counsel having been made therein, and the situation of the Pittsburgh operators being so similar to that of the complainant's in the present case and their position having been so ably presented, the complainant's counsel herein have felt that it was unnecessary to introduce much evidence which they would otherwise have felt called upon to introduce and they now feel that, in view of what has been so ably stated to this Commission by brief and argument, they can add but little, if anything, to what has already been presented to your Commission.

Again, on page 76 of the brief complainant says that the conditions in the Pittsburgh field "so closely resemble those in the No. 8 field."

Complainant's brief also shows that no objection is made to the relation between the Pittsburgh and No. 8 rates that was maintained prior to the Commission's decision in the *Boileau case*. On page 73 it says:

The fact that the operations in the number eight field are newer than those in the Pittsburgh field, and that a higher percentage of the coal is recovered in the Pittsburgh field than in the number eight field, probably accounts for a slightly lower cost of production in the number eight field than in the Pittsburgh field, though the same scale of wages applies to both fields. This slightly lower cost of production in the number eight field, coupled with the 3-cent differential which the number eight field has always had over the Pittsburgh field practically offsets the 10 cent differential in selling price which the Pittsburgh coal has over the number eight coal at the head of the lakes (Rec., p. 350), so that so far as these two districts are concerned there is a most healthful and stimulating rivalry between them, with the result that neither of these districts is seeking any readjustment in their relative conditions.

We are in entire accord with complainant's view of these cases in this respect and we find nothing in the record that justifies a change in the differential under the Pittsburgh rate that the No. 8 district has enjoyed for so many years. After very careful deliberation and consideration of all the facts which entered into the contentions as presented by both sides in the *Boileau case*, we reached the conclusion that the Pittsburgh rate should be reduced 10 cents per net ton. The evidence in the case now before us presents no facts peculiar to the Ohio No. 8 district which lead us to conclude that a greater reduction than 10 cents should be made in the rate therefrom. A decrease of 10 cents in such rate to correspond with the change in the Pittsburgh rate would restore the former differential of 3 cents under the Pittsburgh rate and increase by that amount the spread between the No. 8 rate and the West Virginia rates.

The evidence shows this rate of 85 cents to be too high. Following an extensive investigation, the complainant estimated the average cost of carrying lake-cargo coal over the Wheeling & Lake Erie lines for 146 miles from the mines to the vessel as 41.37 cents per net ton for the year 1910. The defendants contend that it is impracticable to ascertain the cost of operation in any particular branch of the railway business with sufficient accuracy to warrant the use of such figures as an element in determining the reasonableness of a rate.



The use of cost figures in arriving at a judgment with respect to a particular rate has been discussed from time to time in various earlier decisions of this Commission, and in somewhat greater detail very recently in the two important coal cases hereinbefore referred to, the *West Virginia Lake-Coal case* and *Boileau v. P. & L. E. R. R. Co.* We fully realize the limitations of all such calculations, but we also appreciate their intrinsic value. A skillfully prepared brief filed by the respondents is devoted chiefly to showing the variations, inconsistencies, and absurdities of all separation of expenses among the different branches of a carrier's business. It is relatively easy to turn diverse features and processes into ridicule, but such ridicule can not destroy the value of the computations. The principle of costs so often recognized and emphasized by the Supreme Court of the United States is vital, even though its application is still subject to much improvement in certain details. A parallel illustration may be opportune. Who can not point out the gravest inconsistencies, inequalities, and absurdities in the practical operation of established rules of assessment and systems of taxation in almost any community? If no taxes were to be levied until exact justice can be arrived at through the application of fully perfected systems of assessment and taxation, all governments in every civilized country would cease for want of revenue. Cost accounting in the railway business is an exact science compared with assessment and taxation, yet no thoughtful citizen would suggest that no taxes shall be levied until after perfect rules of assessment and apportionment have been promulgated and put into operation. Analyses of operating expenses of railways have been and can be made with substantial accuracy, and whatever defects may still inhere in such processes do not negative the guiding value of the statistical results arrived at.

In the present case the inaccuracies involved, whatever they may be, do not destroy the usefulness of the estimates made regarding the cost of carrying coal from the mines to the harbor.

As the defendants' brief points out, the passenger revenue was less than 9 per cent of the combined freight and passenger revenues on the Wheeling & Lake Erie in 1910. It would seem that the disputes as to the proper method of dividing operating expenses between freight and passenger services are not of vital importance on this road in this case. The defendants offered as a simple practical method of testing the above estimate of the complainant, the application of the operating ratio to the average freight revenue per ton, which yields 40.84 cents per ton for a distance of 110.28 miles. This is equivalent to assuming that the freight and passenger services are equally profitable, but the same witness who introduced this method said that the freight operating ratio must be lower than the passenger



"because the passenger revenue does not pay very well." This estimate of 40.84 cents for 110 miles must therefore be regarded as a maximum estimate of operating expenses attributable to a ton as an average for all freight. If we adjust this for the longer haul of 146 miles and for the difference in the average load per car, we arrive at a figure not over 50 cents per ton. Defendants further contend that it costs more to carry lake coal than the average of all freight because of the special facilities required for handling this coal, but they offered no conclusive evidence on this point. Even at an operating expense of 50 cents per ton, a rate of 75 cents would give an operating ratio of 66.67 per cent, which is more favorable than the ratio experienced by the Wheeling & Lake Erie in 1910 and 1911; that is, lake-cargo coal would be relatively more profitable than the average of all the business of the road.

We have given due consideration to the testimony and the many exhibits submitted in this proceeding and are of the opinion that the defendants' rate of 85 cents per net ton applicable on bituminous coal in carloads from points in the Pittsburgh vein No. 8 coal district of Ohio to the Lake Erie ports of Huron and Cleveland, Ohio, when for transshipment by vessel to points without the state, was unjust and unreasonable and that defendants should establish and maintain for the future for such traffic a rate of not to exceed 75 cents per net ton. An order in accordance with these conclusions will be issued.

It should be noted that since this case was submitted to the Commission for decision, the defendants voluntarily reduced the rate in question to 75 cents. This action was taken by the Pennsylvania Company effective May 1, 1912, and by the Wheeling and Lake Erie effective May 6, 1912.

24 I. C. C.

No. 3732.

ROSENBAUM BROTHERS

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

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*Submitted May 25, 1912. Decided June 7, 1912.*

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The privilege of stopping grain in transit at certain points in the state of Ohio on the through rate from point of original shipment to ultimate destination was subsequently extended to Sandusky, at which point it had not been fully applicable. On the facts of the case reparation is denied with respect to shipments that moved in the meantime.

*John B. Daish and John C. Howard* for complainant.

*William Ainsworth Parker* for Baltimore & Ohio Railroad Company.

#### REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The complainant herein is a corporation engaged in the grain business, having its principal office at Chicago, in the state of Illinois, and in connection therewith maintains and operates grain elevators at various places, including Sandusky, in the state of Ohio, a point located on the line of the Baltimore & Ohio Railroad.

During the period from July 31, 1908, to February 23, 1909, the complainant shipped numerous carloads of wheat from points west of Chicago Junction, in the state of Ohio, which were stopped at Sandusky for inspection, mixing, etc., and which, between the dates of January 15, 1909, and June 7, 1909, were reshipped to various points in the state of Virginia off the line of the Baltimore & Ohio. During this period that carrier provided in its published tariffs for the stoppage in transit of grain at Fostoria, Mansfield, Tiffin, and other points in the state of Ohio, on the through rate from point of original shipment to ultimate destination; but at Sandusky the privilege was restricted to shipments destined to points east of Chicago Junction and reached by the Baltimore & Ohio. This restriction, it is alleged, worked an undue discrimination against complainant at Sandusky and a preference in favor of competitors at other points in the same state. Reparation is asked in the amount of \$2,113.42, based on the difference between the rates charged and

the through rates in effect from the points of origin of the shipments to the various destinations. The complaint was filed on December 22, 1910, and the matter is submitted upon the pleadings and certain documentary evidence that has been admitted of record under stipulation. The Baltimore & Ohio Railroad Company joins in the prayer that reparation be awarded in the amount named. It also appears that on February 1, 1909, that carrier removed the restriction complained of and now provides in its tariffs for the stoppage in transit of grain at Sandusky and its reshipment over the Baltimore & Ohio to any point east of Chicago Junction.

At the hearing which was held in order to have a more complete record than that stipulated by the parties the following facts were developed:

The elevator occupied by the complainant at Sandusky has a capacity of 320,000 bushels. It is the property of the Baltimore & Ohio Railroad Company. Part of it was erected prior to 1888 and is said to have remained idle from 1888 to 1896, when it was leased to the complainants at a nominal rental of \$1 a month, or \$12 a year. Later the complainants, at an expense of about \$20,000, including repairs, enlarged the elevator and gave it a much increased capacity. This new construction was provided for in the lease, which also provided that its cost should be refunded to the complainant by the railroad company, by discounting, at the rate of 10 per cent, all freight charges on grain shipped by the lessee over its rails from the elevator. The lease at the reserved rental of \$12 a year seems to have covered the entire structure. It continued in effect until September, 1908, when a new lease was effected in favor of the Sandusky Elevator Company, a corporation controlled by Rosenbaum Brothers. This lease runs from year to year. It was later assigned to the Lake Erie Elevator Company, which is also controlled by Rosenbaum Brothers. It pays the same rent of \$12 a year.

The lease provides that the Baltimore & Ohio will furnish at cost the necessary power for operating the elevator and, although it is silent on the question, the railroad company also pays both insurance and taxes. The taxes for 1910 amounted to \$233 and the insurance premiums to \$600. In addition the Baltimore & Ohio paid out \$1,000 during that year for alterations and improvements. The total upkeep expense for the year aggregated \$1,825, against which is credited \$12 for rent. The railroad company for many years also paid the complainant an elevation allowance of one-half of 1 cent per bushel, the allowance at this time being one-quarter of a cent in conformity with the allowances paid elsewhere.

On behalf of the railroad company it is said that while the rental is nominal the arrangement is of advantage in that an idle elevator



has been turned into an active property, which has brought a considerable tonnage of grain to the carrier that otherwise would not have moved through Sandusky and over its rails. The advantage to the complainant lies in the fact that it secures the use of a large elevator practically without cost. Its value to the complainant is expressed to some extent by the fact that during the year ending September 30, 1909, grain of the complainant, aggregating over 3,000,000 bushels, passed through the elevator; during the year 1910 the traffic amounted to about 4,000,000 bushels, and during the year 1911 to 3,200,000 bushels.

While it is desirable for any owner of idle property to put it to use so that it will produce some income, it ought not to be necessary to point out that reasons of convenience of that kind must yield, when a railroad is dealing with its property and facilities, to those provisions in the law that prohibit advantages to particular shippers. We shall make no further comment at this time as to the relation shown here between the complainant and the principal defendant. It will suffice to say that we do not regard the case as one in which, contrary to our usual practice, retroactive application should be given to a transit privilege subsequently made effective at Sandusky and on that basis to award reparation.

An order will be entered dismissing the complaint.

INVESTIGATION AND SUSPENSION DOCKET No. 84.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF CEMENT IN CARLOADS FROM UNION BRIDGE, MD., TO NORFOLK, VA., AND OTHER DESTINATIONS.

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*Submitted May 24, 1912. Decided June 6, 1912.*

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Change in the relationship of rates from Union Bridge and Security, Md., to various destinations in Virginia and West Virginia, principally on the Norfolk & Western Railway, proposed in Western Maryland Railway tariff, I. C. C. No. 3791, found to be unjustly discriminatory against Union Bridge, and to give an undue advantage to Security, Md. Tariff directed to be canceled.

*S. T. Griffith* for Tidewater Portland Cement Company, complainant.

*Chas. C. Bye* for Security Cement & Lime Company.

*Thos. G. Smiley* for Western Maryland Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this proceeding is involved an alleged undue discrimination in rates on cement from Union Bridge, Md., to various destinations in Virginia and West Virginia, principally on the line of the Norfolk & Western Railway. The complaint arises from a change in the relationship of rates between Union Bridge and Security, Md., proposed in Western Maryland tariff, I. C. C. No. 3791, the operation of which has been suspended by the Commission until January 4, 1913.

Both of these points of origin are on the Western Maryland Railway—Security three miles east of Hagerstown and Union Bridge 39 miles east of Security. Hagerstown, Md., is the junction point at which this traffic is delivered by the Western Maryland to the Norfolk & Western Railway. Prior to the filing of the suspended tariff the same rates were carried from these stations to points on connecting lines parties to that tariff.

The tariff contains no advances from Union Bridge, the alleged discrimination arising principally from numerous reductions from Security. Prior to the issuance of this tariff no joint rates were published from Union Bridge to Norfolk & Western points east of

Lynchburg, Va., but to such stations on that line as joint rates applied to there was no difference in rate from Security and Union Bridge. The combination rate from Union Bridge to Norfolk, Va., was \$3.75, and the joint rate from Security \$2.40. Under the suspended tariff the rate from Union Bridge to Norfolk is \$3.70 per ton, with no change in the rate of \$2.40 from Security. To Portsmouth, Va., and group there is also a difference of \$1.30 per ton in favor of Security. Twenty-one of the remaining twenty-six groups show a uniform reduction of 30 cents per ton from Security, while no change is made in the rate from Union Bridge. Complainants allege that the effect of the proposed rates would be to shut Union Bridge entirely out of this territory of consumption.

The only representative of the carriers at the hearing was the general freight agent of the Western Maryland Railway, who appeared of record for all lines. This witness stated that the proposed tariff was the result of a refusal on the part of the Norfolk & Western to accept less than its full local rate from Hagerstown on shipments from Union Bridge, although it will accept on shipments from Security a division of a joint rate which is less than its local rate. The Western Maryland is of the opinion that the equality between the two mills should continue. The witness stated his inability to assign any reason for the action of the Norfolk & Western Railway with respect to Union Bridge. The latter carrier, although having the long haul and apparently controlling the rate, was not represented at the hearing, except, as stated, in a general way as were the other connecting lines, by the general freight agent of the Western Maryland.

The mere statement of this presentation of the case is its own establishment of the fact that the carriers have not sustained the burden of proof under the statute. We find that the proposed rates in said tariff unjustly discriminate against Union Bridge to the undue advantage of Security, and an order will be entered directing their cancellation and the maintenance of the present relation of rates for the future.

24 I. C. C.



No. 3390.

RAILROAD COMMISSION OF ARKANSAS

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted May 6, 1911. Decided June 5, 1912.*

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1. Defendant not required to switch a car, containing an interstate shipment of coal, from another line connection at Fort Smith, Ark., to its own team track for unloading by the consignee.
2. A spur track at Little Rock, Ark., constructed jointly by defendant and the state of Arkansas, for the convenient delivery of cars loaded with material for use in the erection of a new capitol building at that point, held not to be a team track in the ordinary meaning of that term, and defendant's refusal to switch two carloads of marble, intended for the capitol building, from another line connection at Little Rock to said spur track, upon demand, found to have been contrary to its switching tariff and therefore in violation of the act to regulate commerce.

*William H. Rector* for complainant.

*James C. Jeffery* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Railroad Commission of Arkansas, under authority vested in it by the laws of that state, filed this petition July 13, 1910, assailing as unduly discriminatory and prejudicial certain practices of defendant, hereinafter described, at Fort Smith and Little Rock, Ark.

In December, 1909, one C. J. Brockman, a florist at Fort Smith, Ark., shipped a carload of coal from Excelsior, Ark., to Fort Smith via the Midland Valley Railroad, whose line from Excelsior to Fort Smith passes into the state of Oklahoma. Brockman's plant is located a fourth of a mile from a spur track known as "Matthew's spur" belonging to defendant St. Louis, Iron Mountain & Southern Railway Company. This track is the nearest facility to Brockman's plant for unloading carload freight. Brockman's plant is about three miles from the connection between the Iron Mountain and Midland Valley lines. Upon notice of the arrival of the shipment at Fort Smith, Brockman requested the Midland Valley to have the car

switched to Matthew's spur and was informed that the Iron Mountain refused to perform the switching service. He then applied directly to the Iron Mountain company to have the switching done and tendered the sum of \$5 as payment therefor. The defendant refused to accept the amount tendered or to perform the service, on the ground that it was under no obligation to switch to its team track from another line connection a carload of freight as to which it had not participated in the line haul. Brockman thereupon unloaded the car from the nearest point on the Midland Valley and hauled the coal by wagon to his plant, a distance of about three miles. Considerable time was thus required for the unloading and the delay resulted in demurrage charges in the sum of \$10.

In April, 1910, two carloads of marble were shipped from Gantt's quarry, Ala., to Little Rock, Ark., via the Chicago, Rock Island & Pacific Railway and connecting lines, other than the defendant. The marble was for the new state capitol building then in course of erection. Upon arrival of the shipments at Little Rock they were delivered by the Chicago, Rock Island & Pacific to the defendant for switching to the capitol grounds. Request was thereupon made of defendant to switch the cars to a spur track known as the "capitol spur" constructed by defendant as a means of delivering material to be used in the erection of the capitol. Defendant at first refused to perform the switching service for the reason that the shipments had come in over a competing line, but later, upon urgent demand by the state authorities, the service was performed. Defendant asserts that the switching was not done in recognition of any obligation on its part, but merely as an accommodation to the state. The shipments were not delivered until about ten days after arrival at Little Rock and by reason thereof work was delayed.

Complainant contends that it was defendant's duty to furnish the transportation demanded at both Fort Smith and Little Rock; and that under its tariffs it is obliged to perform such service whenever called on to do so, upon tender of the tariff charges therefor, irrespective of whether the tracks in question be regarded as ordinary team tracks or as industrial tracks. The contention is in part that defendant's refusal to perform such service subjects shippers of carload freight over other lines to unjust discrimination and undue prejudice.

Defendant contends that the spurs involved are team tracks, parts of its own terminal facilities for the accommodation of shippers over its lines and not for the use of shippers over other lines; that it was under no obligation to perform the service requested of it either at Fort Smith or at Little Rock, and that no such duty rests upon it under its tariffs.



It is not questioned by complainant that the track at Fort Smith known as "Matthew's spur" is an ordinary team track or terminal facility belonging solely to the defendant. It was constructed by defendant for its own use and is situated entirely on its right of way.

Complainant relies upon defendant's tariff, I. C. C. No. 9811, which named charges for switching service at Fort Smith. It reads thus:

Carload freight between connections of other lines and industries located on the tracks of this company shall be as follows:

Two miles and under.....	\$2. 00
Three miles and over two miles.....	3. 00
Five miles and over three miles.....	3. 50
Seven miles and over five miles.....	4. 00

It is contended that the service requested at Fort Smith was within the scope of this tariff. The tariff refers in terms to the transfer of carload freight between connections of other lines and industries located on defendant's tracks. There is a difference between industrial tracks and team tracks. The former are for the handling of carload freight from and to such plants. The cost of construction is usually borne in part by the owners of the plants. Carload freight is switched to and from the plants irrespective of whether the carrier performing the switching service participated in the line haul or not. Shippers have no part in the construction or maintenance of team tracks. They are analagous to freight depots in that they bear the same relation to carload freight that such depots bear to less-than-carload freight.

There is no industry located upon the track in question at Fort Smith. It is not denied that it is a team track, and therefore the tariff referred to had no application to the service demanded.

Another tariff, I. C. C. No. 7524, is mentioned which complainant contends should be construed to apply if the one just considered does not. This is an interstate distance tariff applying between points on defendant's line in Arkansas. Supplement No. 5, effective October 29, 1908, names a rate on coal of \$1 per net ton for a distance of five miles or less. But this tariff is on its face a line-haul tariff, naming rates for that character of service, and in our opinion could not be properly applied to a switching service. Neither of the tariffs referred to embraced the service demanded at Fort Smith. A diligent search of the files of the Commission fails to disclose any tariff published by defendant to cover switching service of the character here involved. The defendant denies that it holds itself out to the public as a carrier for the purpose of transferring freight from connections of other lines to its own team tracks, and the switching demanded by Brockman was not a service or movement provided for in any published tariff.



The record shows that on three occasions during 1909 the defendant switched cars to Matthew's spur from connections on other lines, and it is contended by complainant that its refusal to perform the service requested by Brockman was a discrimination against him and in favor of others for whom a like service was performed. However, it is testified by officials of the defendant company that on the occasions referred to the switching was done by mistake or in violation of the rules of the company, and should not therefore be regarded as evidence of a purpose on defendant's part to perform the service for some persons and not for others. It is shown to be a rule of the company, applicable to all points on its lines, that carload freight is not to be switched to its team tracks from connections on other lines. We do not consider the occurrences referred to, in view of the explanation, as proof that such was the authorized practice of the defendant company.

Complainant further contends that defendant's refusal to switch carload freight from connections on other lines to its team track, while its practice is to switch carload freight from other line connections to industrial tracks, is unduly discriminatory and prejudicial and in violation of the act to regulate commerce. No question as to the amount which should be charged for the service is raised by the record. The question is whether the defendant carrier is under the law obliged to perform this service because its practice is to switch carload freight from other line connections to industries located on its tracks.

Switching to an industrial track is a service for which a regular tariff charge is frequently made by carriers and is over tracks or spurs as to which the cost of construction is generally borne in part by owners of the plants to which they extend. Team-track delivery is a service rendered by carriers in receiving and delivering carload freight in connection with their own line business and is over tracks owned by the carriers. It is a service for which no separate tariff charge is provided and which is analogous to freight-depot service for less-than-carload freight. A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and can not, under section 3 of the statute, be used for handling business from other lines without its consent.

Complainant denies that any question as to the use of defendant's tracks or terminal facilities by *another carrier* is involved in this case. It insists that the service demanded is one that defendant is required to perform as a common carrier for any shipper who demands it. In other words, it asserts that the view contended for would not involve the use of defendant's tracks by another carrier, but would simply require the performance of a service upon tender of a rea-

sonable charge for the service. While in this case the demand was made by an individual and not by the Midland Valley Railroad Company, the service is the equivalent of a terminal service for the railroad which had the line haul.

Several officials of defendant company testified that it is the uniform custom of carriers to use team tracks for handling their own line business exclusively, that the universal practice is to refuse to switch to their own team tracks freight which is handled in transit entirely by other lines, and that it is a rule of the defendant company to refuse to allow its team tracks to be used by connecting lines or by shippers over such lines, and its station agents and officers are so instructed.

As to the shipments of marble for the capitol building at Little Rock, the situation is different. On the record we are of the opinion that the track at that point, known as "capitol spur," which is also called "penitentiary switch," is not a "team track." It was constructed by defendant under contract with the state authorities, and the cost was borne in part by the state. It is situated entirely on land belonging to the state, and was intended for the convenient delivery of material for the capitol building. As the work on the building progressed parts of the track no longer needed were removed, and it is testified by an official of the defendant that when the capitol is completed the track will be removed. The contract with the state provides that defendant shall perform the switching service, and shall do so free of cost as to all cars that may have earned revenue upon its rails, the right being reserved "to charge for such service a reasonable switching rate," as to cars received from connecting lines.

Defendant's tariff, I. C. C. No. 9811, names switching rates at Little Rock covering carload freight between connections with the Chicago, Rock Island & Pacific, over whose lines the shipments in question came into Little Rock, and various enterprises and industrial plants, including penitentiary switch. The facts of record seem to be conclusive against defendant's position that said spur is only a team track or terminal facility to which no tariff applies. If the track is held not to be an ordinary team track, defendant admits that it was wrong in at first refusing to perform the switching service demanded by the state.

We are therefore of opinion that the spur at Little Rock is not a team track, and that defendant's refusal to promptly switch the cars in question was contrary to its switching tariff and so unduly prejudicial to the state. We are further of opinion that it will be the duty of defendant to switch thereto from other line connections all cars loaded with material intended for the building, whenever called upon by the state authorities so to do, upon tender of the proper tariff



charges therefor. By reason of the admission of record that the service may lawfully be demanded and would be performed if defendant's contention that the spur is a team track should not be sustained, we assume that, in view of our conclusion as to the character of the spur, defendant will in the future perform the service.

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No. 3544.

BASCOM-PORTER COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

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*Submitted April 22, 1911. Decided May 7, 1912.*

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Rate of 16 cents per 100 pounds for the transportation of lumber in carloads from El Paso, Tex., to Las Cruces, N. Mex., found to be unreasonable to the extent that it exceeds 10 cents. Reparation awarded.

*Rufus B. Daniel* for complainant.

*F. B. Houghton* for defendant.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant is a corporation engaged in the hardware and lumber business at Las Cruces, N. Mex. In its petition, filed September 20, 1910, it is alleged that an unjust and unreasonable rate was charged by defendant for the transportation of lumber in carloads from El Paso, Tex., to Las Cruces, and reparation is sought.

Between October 6, 1908, and August 1, 1910, complainant received at Las Cruces 32 carloads of lumber, which had originated at producing points in eastern Texas and Louisiana and had been transported thence to El Paso. There was no joint through rate, and the charges were assessed for the through movement upon a combination rate of 34 cents per 100 pounds, consisting of a proportional rate of 18 cents to El Paso and defendant's local rate of 16 cents, El Paso to Las Cruces. Only the latter rate is assailed in the present proceeding, and complainant avers that it is unjust and unreasonable so far as it exceeds 10 cents.

The distance from El Paso to Las Cruces is 44 miles, and the earnings per ton per mile under the 16-cent rate are 7.27 cents; at the  
24 I. C. C.



10-cent rate the earnings would be 4.54 cents per ton-mile. Complainant avers that there was formerly a rate of 10 cents per 100 pounds on sash, doors, and blinds from El Paso to Las Cruces. This rate, however, had never been applicable on lumber, and defendant asserts that it was established for the purpose of encouraging the industry and was canceled in the early part of 1906.

The rate on lumber in carloads from Las Cruces to El Paso is 10½ cents per 100 pounds, and at the time of the hearing there was a rate of 11 cents in effect from El Paso to Deming, N. Mex., 86 miles beyond Las Cruces. This latter rate has since been increased to 16 cents to conform to the requirements of the fourth section of the act.

The 16-cent rate from El Paso to Las Cruces was and is clearly excessive, and upon the record we are convinced that the rate assailed was unjust and unreasonable in so far as it exceeded 10 cents per 100 pounds, and an order will be entered establishing a rate not in excess of that amount. We further find that the shipments were made in accordance with the foregoing statement of facts and that charges were paid at the rate herein found to have been unreasonable, and that damages have resulted to the extent of the difference between the amount paid and the amount that would have been paid at the rate herein found reasonable, and reparation will therefore be awarded on said basis, with interest from the date of payment of the charges.

At the hearing an effort was made to ascertain whether the freight charges complained of had been paid by the complainant. The answers of the complainant's witness upon this point are conflicting. A further effort has been made since the hearing to ascertain the facts, but in our opinion the complainant has not shown that the freight charges were actually paid by it. Upon receipt of proof as to the proper party in whose favor an order of reparation should be entered, and also a statement of the shipments agreed to by the defendant, the order of reparation will be issued.

No. 3902.

PACIFIC STATIONERY & PRINTING COMPANY

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.

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*Submitted September 5, 1911. Decided June 3, 1912.*

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Rates on printographs, writerpresses, planotypes, and addressing machines from La Crosse, Wis., and Chicago, Ill., to Portland, Oreg., found unreasonable to the extent that they exceed \$4.50 per 100 pounds. Reparation awarded.

*Edward M. Cousin* for complainant.

*W. W. Cotton* and *W. A. Robbins* for Oregon-Washington Railroad & Navigation Company and Spokane International Railway Company.

*C. A. Hart* for Spokane, Portland & Seattle Railway Company and Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling printers' supplies and printing machines. By petition, filed March 2, 1911, it assails as unreasonable defendants' rate of \$6 per 100 pounds charged for the transportation of printing machines, addressing machines, addressographs, writerpresses, printographs, and similar machines (which the evidence shows includes planotypes) from La Crosse, Wis., and Chicago, Ill., to Portland, Oreg. It is alleged that the rate on printing machines, writerpresses, printographs, and other similar machines should not exceed \$2.60, and on addressing machines and addressographs \$3. Reparation is asked. None of the shipments involved was made from Chicago. On this traffic rates from La Crosse and Chicago to Pacific terminals are the same.

The printograph, writerpress, and other similar machines are not specifically mentioned in western classification, but are classified under letter duplicators n. o. s. at double first class, the first-class rate being \$3 per 100 pounds from and to the points mentioned. Complainant contends that they should not take a higher rate than printing presses, boxed, which are rated at second class and take a rate of

\$2.60 between the points of origin and destination named. The addressograph is classified with addressing machines at double first class.

The printograph is a miniature printing press which prints from a flat type bed as does the ordinary printing press. Its purpose is to produce circular letters similar to those written on a typewriter, for which purpose imitation typewriter type is used. It will, however, take the standard type, electrotype, electroplate, and wood cuts the same as a job printing press. Without type cabinet, type, and sundries, it occupies a space of approximately 3 cubic feet, weighs about 220 pounds, and retails at \$175. A complete outfit sells for \$250 to \$350. In shipping, the detachable parts are removed, the remainder of the machine crated, and the entire package boxed, the detached parts being secured to the inside of the outer box. The type cabinet and type are boxed separately. When properly packed it is not liable to damage. The planotype and writerpress are constructed along the same general lines and do practically the same work as the printograph.

The addressing machines involved were set up on top of an ordinary cabinet with a foot lever which operates an arm on the top of the cabinet. They retail at from \$40 to several hundred dollars, dependent upon the number of names to be addressed. The addressograph is an addressing machine, works on the general principle above described, and prints by means of rubber type.

Complainant's contention that the printograph and similar machines should take the same rate as printing presses, and that addressing machines should take the rate on stencil-cutting machines, is not sustained by the record. While it may be true that the printograph, planotype, and writerpress will do work similar to that done on an ordinary printing press, they are primarily for office work. Testimony was adduced to show that a job printing press printing the same size sheet as the printograph would weigh approximately 1,800 pounds and sell for about \$225.

Prior to June 1, 1908, the multigraph was also rated with letter duplicators at double first class. On that date the classification rating of the multigraph was, by order of the Commission, reduced to one and one-half times first class, which would make the rate from La Crosse to Portland \$4.50. *Forest City Freight Bureau v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 295. While there is some difference between the construction and value of the machines herein involved and the multigraph, we believe they should be given the same rate between the points of origin and destination named.

Between March 25, 1910, and November 30, 1910, complainant made nine shipments of printographs by various routes over defendants' lines from La Crosse to Portland. The expense bills covering



these shipments described them as printographs, addressing machines, letter duplicators, advertising machines, cabinets, and machinery, and rates ranging from \$3 to \$6 per 100 pounds were assessed. Complainant testified that all these shipments consisted of printographs.

Five of these shipments moved over the Chicago, Milwaukee & St. Paul Railway, Chicago, Milwaukee & Puget Sound Railway, and the Oregon-Washington Railroad & Navigation Company at rates of \$3 on some of the shipments and \$4.50 on others, making an undercharge of \$24.60.

On the remaining shipments moving by various other routes over the lines of defendants, charges were collected in the sum of \$164.40, based on weight of 2,740 pounds at the rate of \$6 per 100 pounds.

Upon consideration of all the facts we are of opinion and find that for the transportation of the printograph, planotype, writer-press, and addressing machines from La Crosse and Chicago to Portland, the present rate is unreasonable to the extent that it exceeds \$4.50 per 100 pounds and a rate for the future will be prescribed upon that basis. We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at rates found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is, therefore, entitled to an award of reparation in the sum of \$41.10, with interest from December 21, 1910, as follows: Against the Chicago, Burlington & Quincy Railroad, Great Northern Railway and Spokane, Portland & Seattle Railway in the sum of \$9.90; against the Chicago & North Western Railway, Chicago, Milwaukee & St. Paul Railway, Minneapolis, St. Paul & Sault Ste. Marie Railway, Canadian Pacific Railway, Spokane International Railway, and Oregon-Washington Railroad & Navigation Company in the sum of \$12.15; and against Chicago & North Western Railway, Minneapolis, St. Paul & Sault Ste. Marie Railway, Canadian Pacific Railway, Spokane International Railway, and Oregon-Washington Railroad & Navigation Company in the sum of \$19.05. There is an undercharge of \$24.60 on the shipments which moved over the Chicago, Milwaukee & St. Paul Railway, Chicago, Milwaukee & Puget Sound Railway, and Oregon-Washington Railroad & Navigation Company.

No. 4434.  
C. W. HULL COMPANY  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

*Submitted December 18, 1911. Decided June 6, 1912.*

Tariffs of Southern Railway and Chicago & Alton Railroad provided that on washed No. 1 egg coal there should be deducted 1 per cent for moisture from *actual net weight*. On four cars which moved from Lake, Ill., to Iowa points on Chicago & North Western Railway that carrier refused to make deduction as shown by billing, and collected tariff rates on net weight. Tariff effective on Chicago & North Western Railway provided that shipments received from connections accompanied by billing showing gross, tare, and net weights would be accepted without reweighing. Complainant contended that latter provision bound Chicago & North Western Railway to accept figures showing remainder after deduction for moisture as *net weight* and asked for reparation; *Held*, That deduction for moisture from net weight does not constitute the remainder as net weight, but it is merely an arbitrary basis on which to compute charges.

*E. J. McVann* for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged at Omaha, Nebr., in the business of wholesaling and shipping coal and building materials, filed an original and a supplemental complaint September 21, 1911, alleging that it was compelled to pay unreasonable rates for the transportation of four carloads of coal from Lake, Ill., as follows:

Date.	Destination.	Weight.	Rate.	Charges.
1908. Nov. 13	Sioux City, Iowa.....	91,400	\$3.00	\$137.11
Nov. 19	.....do.....	74,100	3.00	110.90
1909. Jan. 8	Castana, Iowa.....	46,100	2.60	59.78
Nov. —	Whiting, Iowa.....	64,700	2.60	84.03

Reparation is asked. This claim was first filed with the Commission November 26, 1909.

The shipments in question consisted of washed No. 1 egg coal and originated on the Southern Railway. Three shipments moved from

East St. Louis to Peoria via the Chicago & Alton Railroad, and thence via the Chicago & North Western Railway. The fourth shipment moved via the Chicago, Peoria & St. Louis Railway to Peoria, thence via the Chicago & North Western Railway. The shipments moved on a joint proportional rate to Peoria, and on the North Western's local rates thence to destinations. Tariffs of the Southern Railway in which the Chicago & Alton and Chicago, Peoria & St. Louis railway companies concurred, provided in part as follows:

Allowance for moisture in coal handled through washer at Lake, Ill.

Rule 8. On shipments of washed coal, deductions for moisture from the actual net weights as ascertained on track scales at point of shipment will be made. The maximum deductions that will be allowed are as follows: No. 1, egg coal, 1 per cent.

No deductions will be allowed if weighed en route or at destination. Agents at billing points will show gross, tare, and net weights and deductions for moisture on face of waybills.

The bills of lading executed by the Southern Railway showed deductions of 1 per cent in weight in each case for moisture. The tariffs of the Chicago & North Western Railway did not provide for such deductions, and that company collected the tariff rates on the actual net weights for the portion of the service performed by it.

The question presented is one of tariff application and interpretation. The Chicago & North Western could not be bound, so far as the charges on its own line were concerned, by tariffs of its connections in which it had not concurred; neither could it ignore the provisions of the tariffs of its connections with reference to charges for the services performed by those connections. The complainant, therefore, was entitled to a deduction of 1 per cent in weight on that part of the haul which was performed by the Southern Railway, Chicago & Alton Railroad, and Chicago, Peoria & St. Louis Railway.

A tariff effective at the time, governing coal traffic on the Chicago & North Western, provided that—

Coal or coke received from connecting line on transfers which do not show gross, tare, and net weights will be weighed at junction point, \* \* \*. If received on transfers which show the gross, tare, and net weights, the coal or coke will not be reweighed at junction point, or en route, and connecting line's weights, as shown on transfers, will be used and accepted in billing.

Complainant relies on this language of the tariff to support its contention that the North Western was bound to make the deduction for moisture on its part of the service because the billing from its connections showed such deductions. This is on the theory that the weights shown after such deductions constituted the *net* weights. In tariffs providing for the deductions, the language was "deductions from the actual net weights." We find, therefore, since the tariffs



of the Chicago & North Western did not provide for deductions for moisture, the complainant is not entitled to have that company shrink its earnings on that account. The complaint will be dismissed.

An examination of the record shows that there are some small overcharges and undercharges on these shipments, which should be adjusted by the carriers.

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No. 4751.

HERMAN LOEB

v.

TEXAS & PACIFIC RAILWAY COMPANY.

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*Submitted April 25, 1912. Decided June 6, 1912.*

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Joint through rate of 72 cents per 100 pounds on cotton-compress machinery in carloads from New Orleans, La., to Marshall, Tex., found unreasonable to the extent that it exceeds 40 cents per 100 pounds. Reparation awarded.

*George T. Atkins and E. H. Schoenhardt for complainant.  
E. L. Sargent and F. G. Wright for defendant.*

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant, a resident of Shreveport, La., is engaged in operating cotton compresses at various points, including Marshall, Tex. By petition, filed February 20, 1912, he alleges the exaction of an unjust and unreasonable rate for the transportation of 6 carloads of cotton-compress machinery from New Orleans, La., to Marshall, Tex., and asks reparation. He further alleges violation of section 4 of the act, in that the rate charged exceeded the aggregate of intermediate rates from New Orleans to Shreveport and thence to destination, and also in that it exceeded a rate of 41 cents per 100 pounds contemporaneously maintained from New Orleans through Marshall to Houston, Galveston, Beaumont, and other interior Texas points.

The shipments in question, forwarded between December 12 and December 20, 1911, weighed in the aggregate 321,700 pounds, and charges thereon were collected in the sum of \$2,316.20, on basis of 72 cents per 100 pounds, which was the joint through class-A rate to Texas common points, applicable per western classification on cotton

compresses, carloads, minimum weight 36,000 pounds. At the same time defendant maintained from New Orleans to Shreveport, La., on both state and interstate traffic, a class-A rate of 25 cents per 100 pounds, and from Shreveport to Marshall, a class-A rate of 33 cents per 100 pounds. It is stated that no compress machinery is manufactured at New Orleans and that there is no regular movement therefrom, the shipments here involved having consisted of a secondhand compress purchased in an emergency. Such machinery is manufactured at St. Louis, Mo.; Birmingham, Ala.; and Elberton, Ga.; and from those points to Waco, Tex., a representative Texas common point, the distances and rates are, respectively:

From—	Distance, miles.	Rates, in cents.	
		Per 100 pounds.	Per ton per mile.
St. Louis, Mo.....	752	79	2.101
Birmingham, Ala.....	779	82	2.105
Elberton, Ga.....	1,053	83	1.576

Complainant in an exhibit cites these, together with numerous rates from New Orleans to western and southwestern points (class A in every instance), the average haul being 1,055 miles, and the average rate 53 cents per 100 pounds, or 1.01 cents per ton per mile, and shows that the rate of 27 cents asked for would yield defendant 1.545 cents per ton per mile. This computation, however, appears to be based upon a distance of 349 miles, whereas the Texas & Pacific distance New Orleans to Marshall through Shreveport, the route of movement, is 368 miles. Moreover, the average distance cited in comparison is nearly three times as great as that from New Orleans to Marshall.

One of the factors of the combination on Shreveport of 58 cents is the rate of 33 cents, Shreveport to Marshall, with which we must deal in the light of the Commission's decision in *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31. The Texas mileage scale commodity single-line rate on cotton gins and compresses for a distance of 42 miles is 15 cents, and this is applicable over the Texas & Pacific from Dallas in the direction of Shreveport. Marshall is 42 miles from Shreveport, and in the *Shreveport case, supra*, it was held that the Texas & Pacific rate upon any commodity from Shreveport into Texas should not exceed the contemporaneous charge for the carriage of that commodity from Dallas toward Shreveport for an equal distance. Combination of this rate of 15 cents with the rate to Shreveport produces, in lieu of 58 cents, a through rate of 40 cents, or 2.173 cents per ton per mile. Our conclusion is that the rate of 72 cents

charged was unreasonable to the extent that it exceeded 40 cents, and the carrier will be required to maintain for the future a rate upon the traffic not in excess of 40 cents per 100 pounds, carloads, minimum weight 36,000 pounds.

We further find that complainant made the shipments in accordance with the above statement of facts, and paid charges thereon at the rate found herein to have been unreasonable, and that complainant has been damaged to the extent of the difference between the amount which he did pay and the amount which he would have paid at the rate herein found reasonable, and is therefore entitled to an award of reparation in the sum of \$1,029.40, with interest thereon from December 25, 1911. An order will be entered in accordance with the finding herein announced.

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No. 4440.

F. B. ALEXANDER

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted January 4, 1912. Decided June 3, 1912.*

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Ambiguous tariff provision resulted in unreasonable charges for the transportation of an automobile from El Paso, Tex., to Los Angeles, Cal. Reparation awarded.

*Rufus B. Daniel* for complainant.

*J. R. Christian* for Southern Pacific Company and Galveston, Harrisburg & San Antonio Railway Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION :

The complainant, a resident of El Paso, Tex., in his petition, filed September 25, 1911, alleges that freight charges exacted by the defendants for the transportation of an automobile from El Paso, Tex., to Los Angeles, Cal., were unjust and unreasonable. Reparation is asked.

The automobile in question, which weighed 2,150 pounds, moved via the defendants' lines from El Paso to Los Angeles, on May 31, 1910, and freight charges thereon in the sum of \$101.05 were paid by

24 I. C. C.



the complainant, based on a rate of \$4.70 per 100 pounds. There was no commodity rate in effect on automobiles in less-than-carload quantities from El Paso to Los Angeles, and the shipment was subject to class rate provided for self-propelling vehicles in western classification, which contained the following provision:

Self-propelling vehicles, n. o. s., l. c. l., not boxed or crated, min. wt. 2,000 pounds each (subject to rule 17), d 1 class; with fixed or standing tops, boxed or crated, d 1 class; without fixed or standing tops, boxed or crated,  $1\frac{1}{2}$  times 1 class.

Rule 17, above referred to, pertains to shipments on open cars and has no bearing on the shipment in controversy, which moved in a closed car.

Rule 14 of the above classification defines articles crated to mean:

Inclosed on all sides, including bottom, with framework, so as to allow of their being taken in and out of a car within the crate, and so as to fully protect the article from damage by contact with other freight.

At the time of movement the first-class rate from El Paso to Los Angeles was \$2.35 per 100 pounds, and the agent of the initial line after inspecting the shipment determined that it was not crated in conformity with rule 14 above quoted, in that the automobile could not be removed from the car without first removing the crate and the freight charges above shown were accordingly assessed, based on the double first-class rate provided for self-propelling vehicles not boxed or crated. The automobile in question was loaded by the complainant, who after placing the machine in the car constructed a crate around it, placing two boards beneath it to which the wheels were made fast in order to prevent the automobile from slipping, and upon which uprights were fixed and a frame built. There was no bottom to this crate other than the two boards placed beneath the wheels, and the automobile could not be removed from the car in the crate. It is the complainant's contention that the provisions of rule 14 of the western classification, requiring that articles be inclosed at the bottom and be so crated as to allow of their being taken in and out of a car within the crate, was abrogated by exceptions to the western classification, as published in Pacific freight tariff bureau exceptions, sheet No. 1, F. W. Gomph, agent, I. C. C. No. 4, and that the shipment being crated in compliance with the provisions of this exception sheet, was entitled to the one and one-half times first-class rate of \$3.52 $\frac{1}{2}$  per 100 pounds.

The above exception sheet governed the movement in question, and in item 235 provided as follows:

*Vehicles, crated.*—The requirements of the western classification No. 47 (I. C. C. No. 5, of F. O. Becker, agent), supplements thereto and reissues thereof, as to use of crates of certain dimensions, thicknesses, etc., in order to entitle vehicles in less-than-carload lots to the crated ratings contained therein, is

hereby canceled. Class rates provided for crated vehicles in less-than-carload lots will apply when the freight is offered in substantial crates, irrespective of the size or thickness, etc., of the boards used in constructing same.

The application of this provision is extremely ambiguous and uncertain, due to the fact that the term "etc." as used therein is not explained, and while the defendants contend that this provision did not abrogate rule 14 of the western classification the complainant with equal force contends that it did.

The defendants do not deny that the crate was of a substantial nature and the complainant testified under oath that he crated the automobile in accordance with what he interpreted the defendants' rules to require in order to get the benefit of the lower rate. As repeatedly held by the Commission, tariffs should be framed in express and clear terms so as not to be open to misinterpretation. Upon consideration of the facts of record we are of the opinion and find that the rate charged was unreasonable to the extent that it exceeded \$3.52½ per 100 pounds, which we find to have been the rate lawfully applicable to the shipment in question. We further find that the complainant, F. B. Alexander, shipped an automobile in accordance with the foregoing statement of facts and paid charges thereon at the rate of \$4.70 per 100 pounds, herein found to have been unreasonable; that said complainant has been damaged to the extent of the difference between the amount which he did pay and the amount which he would have paid at the rate of \$3.52½ per 100 pounds above found reasonable; and that he is therefore entitled to an award of reparation in the sum of \$25.26, with interest from June 9, 1910. An order in accordance with these conclusions will be entered.

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No. 4232.

SAMUEL PRESTON DAVIS

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted November 14, 1911. Decided June 6, 1912.*

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Rate of \$4.15 per net ton for the transportation of cottonseed meal and hulls in carloads from Monticello, Ark., to points of destination located on the Texas & Pacific Railway in Louisiana found to have been unreasonable and unduly prejudicial to the extent it exceeded \$3.15 per ton. Reparation awarded.

*Guy W. Swaim* for complainant.

*Henry G. Herbel* for St. Louis, Iron Mountain & Southern Railway Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a manufacturers' agent and dealer in cottonseed products at Little Rock, Ark. By petition, filed June 24, 1911, he alleges that unreasonable and unduly discriminatory rates were assessed by defendants for the transportation of six carloads of cottonseed meal shipped during February and March, 1911, from Monticello, Ark., to Hills, St. Louis Plantation, and Milly Plantation, La. Reparation is asked.

Under F. A. Leland's territorial directory tariff, which provides rate bases for this traffic, the western half of Arkansas, roughly speaking, lies in the Little Rock-Fort Smith territory and the eastern half in Memphis territory. For rate-basing purposes the state is divided by that part of the line of the St. Louis, Iron Mountain & Southern Railway which extends southeasterly to Little Rock and Pine Bluff, Ark., thence southwesterly to Texarkana, Ark. Fort Smith, Ark., is on the Iron Mountain, near the northern boundary of the Little Rock-Fort Smith territory, and Monticello is on a branch line of the Iron Mountain near the southern boundary of the Memphis territory, 22 miles from the main line, which extends into Louisiana and connects with the Texas & Pacific Railway at Alex-



andria, La., and Ferriday, La. Fort Smith is approximately 300 miles northwest of Monticello and is therefore relatively 300 miles more distant from the points of destination.

Five cars weighing 50,000 pounds each and one car of 60,000 pounds, aggregating 310,000 pounds in weight, were originally consigned and described as "fertilizer, made from cottonseed meal and hulls." On this commodity a joint rate of \$3 per ton applied at the time of movement. Upon inspection by the western railway inspection bureau and weighing association the description of the shipments was corrected to read, "cottonseed meal," and the evidence shows prepayment of total charges of \$775 on this corrected basis. Testimony was offered to prove that cottonseed meal and fertilizer made from cottonseed meal should take similar rates.

A joint rate of \$2.50 per ton on "fertilizer (cottonseed meal)" applied prior to May, 1904, and a joint rate of \$3 per ton on "fertilizer (cottonseed meal straight or cottonseed meal and hulls mixed) c. l." applied from the above date to July 7, 1910, on traffic from Monticello to Hills and St. Louis Plantation. When these shipments moved there was no joint rate applicable to the destination points, and the sum of intermediate rates based on Barton, La., made the lowest combination. The joint rate from St. Louis, Mo., to Barton, of \$3.65 per ton, subject to a differential of 5 cents per 100 pounds in favor of Memphis territory and a 10-cent per 100 pounds differential in favor of Little Rock-Fort Smith territory, made the rate to Barton from Monticello \$2.65 per ton and from Fort Smith \$1.65 per ton. Beyond Barton a local rate of  $7\frac{1}{2}$  cents per 100 pounds, or \$1.50 per ton, for distances under 50 miles, made the through rate \$4.15 per ton from Monticello and \$3.15 per ton from Fort Smith to destinations.

Expense bills are not in the record, but testimony indicates that the sum of \$775 collected in the first instance on a rate of 25 cents per 100 pounds was reduced by refund of \$131.75, making the total charge assessed \$643.25, based on the \$4.15 per ton combination rate.

Reparation is asked in the sum of \$155, which amount represents the excess collected above charges which would have accrued had the combination rate of \$3.15 per ton, then in force from Fort Smith and other relatively more distant points, been applied.

It is noted that subsequently to the hearing the defendants published, effective date January 1, 1912, a joint commodity rate of 20½ cents per 100 pounds or \$4.10 per ton on cottonseed meal and hulls, straight or mixed carloads, also fertilizer manufactured from cottonseed meal applicable from Arkansas meal-shipping points generally, including Monticello and Fort Smith, to the destination points involved, which rates are now in force via the Iron Mountain and Texas & Pacific railways.

The record does not in our opinion justify a lower rate for distances so much greater than that over which the assessed rate from Monticello applied. On a per-ton-per-mile basis the rate assessed was 13.833 mills from Monticello and less than 6 mills from Fort Smith, Mulberry, Ozark, Ark., and other points in the Little Rock-Fort Smith territory.

Upon consideration of the facts we are of opinion and find that the charges assessed were unreasonable and unduly prejudicial to the extent that they exceeded \$3.15 per ton. We further find that complainant was damaged in so far as he paid charges upon shipments based on a rate in excess of \$3.15 per ton, and is therefore entitled to an award of reparation on that basis. Upon receipt of paid expense bills or other competent evidence that the charges were paid by complainant an order awarding reparation will be entered. In the disposition of this case we express no opinion as to the reasonableness of the rate now in force from shipping points other than Monticello.

The carriers will be required to maintain a rate not in excess of \$3.15 per ton for the transportation of cottonseed meal and hulls in carloads from Monticello, Ark., to the destinations involved for a period of two years.

24 I. C. C.

No. 3884.

EDWARD T. SLIDER

v.

SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted March 12, 1912. Decided June 3, 1912.*

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Rates from New Albany, Ind., to East St. Louis, Ill., and St. Louis, Mo., on coal, and to Louisville, Ky., on sand and gravel not found unreasonable. Complaint dismissed.

*Thompson & McAdams* for complainant.

*A. P. Humphrey, jr.*, for Southern Railway Company and Kentucky & Indiana Terminal Railroad Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

The complainant, a dealer in coal, sand, and gravel at New Albany, Ind., in his petition, filed March 2, 1911, attacks as unreasonable the rates from New Albany to East St. Louis, Ill., and St. Louis, Mo., on coal, and to Louisville, Ky., on sand and gravel.

For some years prior to August 1, 1906, the rate on coal from New Albany to East St. Louis was 90 cents per ton and the rate to St. Louis was made by the addition of a bridge arbitrary of 30 cents per ton. Since that date the rate to East St. Louis has been \$1.05 and to St. Louis \$1.15. During the existence of the 90-cent rate from New Albany the rate from Cincinnati, Ohio, to East St. Louis was \$1.40, which was reduced to \$1.25 about the time the rate from New Albany was advanced. While the 90-cent rate was in force from New Albany, complainant shipped large quantities of coal to St. Louis and East St. Louis, but since the increased rates have become effective complainant has practically been driven from those markets. The record shows that he made repeated efforts to regain the business, but without success, as he is wholly unable to compete with the Cincinnati shippers, who now enjoy the business which he has lost.

Complainant contends that the rates from New Albany should not exceed 75 cents to East St. Louis and 85 cents to St. Louis. The distance from New Albany to East St. Louis is 265 miles, and the rate of \$1.05 yields 3.96 mills per ton per mile, while the distance



from Cincinnati to East St. Louis is 336 miles, making the yield under the \$1.25-rate 3.72 mills per ton per mile. Comparison with earnings on coal moving between other points where length of haul and conditions are substantially similar does not indicate that these rates are high. It is also to be remembered that both these rates include switching at destination and the St. Louis rate includes the bridge charge.

It is also pointed out by complainant that a great deal of coal moves down the Ohio River to Cairo and thence up the Mississippi to St. Louis, and he contends that the defendants should take this into consideration in making their rates. However, the matter of meeting competition is a question for the carriers so long as no undue discrimination results.

Complainant states that a large number of empty coal cars move west from New Albany via the line of the principal defendant, and argues that we should establish a rate that would move his coal and enable defendants to secure loads for this equipment. It develops, however, that these cars only go as far as Huntingburg, Ind., which is about 75 miles west of New Albany, where they receive loads from the mines in that vicinity.

All the coal involved in this case comes down the Ohio River in barges from Pennsylvania and West Virginia fields. Louisville is 134 miles below Cincinnati, and it costs complainant about 50 cents per ton more to get his coal from the mines than it costs Cincinnati dealers, and the present differentials in favor of New Albany are not sufficient to overcome this disadvantage. Complainant's ability to compete in the St. Louis market prior to the advance appears to have been due to the fact that he enjoyed a rate that was low compared with the Cincinnati rate, while under the present adjustment the rates from both points are on a relative basis, and complainant is not accorded a rate that overcomes the natural disadvantages of his location. It is not the province of this Commission to equalize localities so that they may compete in a common market, nor can a shipper's commercial needs be made the basis of a finding that a rate is unreasonable. We think the record does not warrant the condemnation of the present rates.

We pass now to the question of the reasonableness of a rate of 20 cents per ton, minimum 40 tons, on sand and gravel from New Albany to Louisville. This rate, when complainant loads to 55 tons, makes the charge for the service \$11 per car. The traffic is loaded at complainant's switch on Southern Railway tracks. It moves to Southern Railway yards in New Albany, where it is placed in a train for Louisville. Thence it is handled via the Southern Railway's New Albany Belt Line and over the Kentucky & Indiana Terminal Company's

bridge to Youngtown yards in Louisville, where the train is broken up and cars placed in cuts or switch trains which take them to various deliveries in Louisville switching limits on the tracks of the Southern Railway and the Terminal Company. The distances from New Albany to the various delivery points in and about Louisville range from 4 to 10 miles. For the movement of similar shipments between various points in Louisville the defendants maintain a charge of \$5 per car regardless of weight, and complainant contends that defendants should accord him the same rate, which would place him on a parity with his Louisville competitors. He also calls attention to the fact that there is a rate of 30 cents per ton on crushed stone from Milltown, Ind., to New Albany and Louisville, a haul of about 33 miles, and states that there is some competition between this stone and his sand and gravel. During the past 10 years the rate on sand and gravel from New Albany to Louisville has ranged from 20 to 30 cents per ton, and is now the lowest rate maintained on any commodity for service between the points in question. Complainant says that many years ago defendants maintained a rate of \$3 per car, but we have not been able to verify that statement from tariffs on file with the Commission.

The rate of 20 cents per ton is not out of line with rates in effect at St. Louis and other river crossings.

Upon consideration of all the facts disclosed by the record we are unable to find that the rates attacked in this proceeding are unreasonable. An order will be entered therefore dismissing the complaint.

24 I. C. C.

No. 4081.  
NATIONAL REFINING COMPANY  
v.  
MISSOURI PACIFIC RAILWAY COMPANY.

*Submitted September 22, 1911. Decided June 3, 1912.*

1. Present rate of 33.1 cents per 100 pounds for the transportation of petroleum and its products in carloads from Coffeyville, Kans., to Hastings, Nebr., not found to be unreasonable.
2. Rate of 18.4 cents per 100 pounds for the transportation of petroleum and its products in carloads from Coffeyville, Kans., to Sedalia, Mo., found to have been unreasonable to the extent that it exceeded 17 cents. Reparation awarded.

*C. D. Chamberlin* for complainant.

*Herbert J. Campbell* and *B. M. Flippin* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the producing and refining of petroleum at Coffeyville, Kans. By petitions, filed May 8, 1911, it attacks, as unjust and unreasonable, defendant's rates for the transportation of petroleum and its products from Coffeyville to Hastings, Nebr., and Sedalia, Mo. Reparation is asked on shipments to Sedalia.

When this proceeding was instituted the rate on petroleum and its products in carloads from Coffeyville to Hastings was fifth class, or 38 cents per 100 pounds. The rate from Coffeyville to Fremont, Nebr., though it was formerly 30 cents, had been reduced to 22 cents, which was the Omaha basis. As no reduction was made in the rate to Hastings, this adjustment increased the differential of Hastings over Fremont from 8 cents to 16 cents. In *National Petroleum Asso. v. M. P. Ry. Co.*, 18 I. C. C., 593, the Commission reduced the rate from Coffeyville to Omaha to 17 cents. As Hastings under the former basis carried a differential of but 8 cents over Fremont, complainant contends that a rate of 25 cents should be established from Coffeyville to Hastings. We do not find that the 17-cent rate was ever published to Fremont, and the 22-cent rate



to that point is still in force. Since September 8, 1911, just subsequent to the hearing in this case, defendant has maintained a rate of 33.1 cents from Coffeyville to Hastings, which it appears is made up of a rate of 17 cents to Lincoln, Nebr., plus a rate of 16.1 cents from Lincoln to Hastings, prescribed by the Nebraska state railway commission. Rates on the basis of Nebraska state rate combinations were also published to a number of other points. Defendant claims that this is an equitable adjustment and affords shippers a reasonable rate. Competitors of complainant are located at Sugar Creek, Mo. The rate from that point to Hastings is 28 cents and to Superior, Nebr., 50 miles south of Hastings, 26 cents, a differential of 2 cents under the Hastings rate. The rate from Coffeyville to Superior is 31 cents, or a differential of 5 cents over the Sugar Creek rate; a differential of about 5 cents over the Sugar Creek rate is accorded Coffeyville on traffic to various other points in the vicinity of Superior and Hastings. There is nothing in this record to warrant our disturbing the present differentials, and upon consideration of all the facts and circumstances we are unable to find that the present rate is unjust or unreasonable.

Between May, 1909, and April, 1911, complainant shipped from Coffeyville to Sedalia numerous carloads of petroleum products upon which charges were collected on the basis of a rate of 18.4 cents per 100 pounds. Complainant contends that the rate should not exceed 13 cents and states that such an adjustment would enable it to more successfully compete with the refiners at Sugar Creek, who enjoy a rate of 8.4 cents to Sedalia, established by the Missouri state authorities. Formerly the rate from Coffeyville to Sedalia and St. Louis and other points in central and eastern Missouri was fifth class, or 22 cents. The rate from Coffeyville to Kansas City was 10 cents; and after the Missouri state authorities prescribed a rate of 8.4 cents from Kansas City to Sedalia, defendant reduced the through rate from Coffeyville to Sedalia to 18.4 cents. Rates on the basis of the Kansas City combination were also published to several other points in the 22-cent blanket territory. Defendant for several years has maintained a rate of 17 cents from Coffeyville to St. Louis, but claims that this rate was forced upon it by the Missouri, Kansas & Texas Railway, which first established it with the view of placing Coffeyville refiners in a position to meet competition of refiners in the vicinity of Chicago and at Wood River, Ill. Both of these lines operate through Sedalia to St. Louis, but neither has published the 17-cent rate to points intermediate to St. Louis. Defendant maintains a 17-cent rate from Muskogee, Okla., to St. Louis, also a 17-cent rate from Muskogee to points in Missouri, such as Carthage, Joplin, Springfield, and Webb City, where substantially the same length of haul is involved as from Coffeyville to Sedalia.

It is not the province of this Commission to prescribe rates to enable shippers to overcome their natural disadvantages of location, and we find no justification for the 13-cent rate prayed for; but upon consideration of all the facts disclosed by the record we are of the opinion and find that the rate charged on these shipments to Sedalia was unreasonable to the extent that it exceeded 17 cents per 100 pounds.

We further find that complainant made certain shipments and paid charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable. The expense bills covering a number of the shipments are not in evidence, and the record contains no proof of the total amount of charges paid. Complainant should submit a statement covering the shipments that have moved and that will have moved at the 18.4-cent rate, and we shall, upon verification thereof by defendant, enter an order for reparation in such an amount as shall be found due.

An order will be issued at this time requiring defendant to establish and maintain for a period of two years a rate from Coffeyville to Sedalia which shall not exceed the rate herein found reasonable.

24 I. C. C.

No. 3321.  
GRENADA OIL MILL  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY.

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No. 3380.  
GRENADA OIL MILL ET AL.  
v.  
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted December 6, 1910. Decided June 8, 1912.*

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Rate of \$1.80 per net ton on bituminous coal from Herrin, Ill., and Wheatcroft and Sturgis, Ky., to Grenada, Miss., found unreasonable to the extent that it exceeds \$1.60 per net ton.

*J. L. Barnard and C. Lee Crum* for complainants.

*R. Walton Moore* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These complaints were consolidated at the hearing and will be disposed of in one report.

The Grenada Oil Mill is a corporation engaged in manufacturing cottonseed oil at Grenada, Miss. M. E. Powell is a dealer in coal at Grenada. By petitions, filed June 10, 1910, and July 8, 1910, it is alleged that the rate of \$1.80 per ton charged by the Illinois Central Railroad for the transportation of coal from Wheatcroft and Sturgis, Ky., Herrin, Ill., and Brilliant, Ala., to Grenada, and the joint rate of the Illinois Central Railroad and Southern Railway of \$2 per ton from the Piper Mines, Ala., to Grenada, are unreasonable and unduly discriminatory in so far as they exceed \$1.25 per ton.

Grenada is located on the Illinois Central and Yazoo & Mississippi Valley railroads and has a population of 4,000. The total movement of coal into Grenada is estimated by complainants at 400 cars per annum, and most of it comes from the Kentucky and Illinois mines located on the Illinois Central Railroad. The Grenada Oil Mill consumes from 1,200 to 1,500 tons per annum for steam purposes, all of it coming from the Kentucky and Illinois mines. Complainant M. E.



Powell testified that he handles about 2,000 tons per annum, of which 75 per cent is high-grade coal from the Alabama coal fields. The average price of coal at the Kentucky and Illinois mines is much less than the price for the class of coal received at Grenada from the Piper and Brilliant mines in Alabama.

From Herrin to Grenada the distance is 329 miles; from Wheatcroft 345 miles, and from Sturgis 348 miles. From these points the Illinois Central Railroad has direct lines to Grenada. The Brilliant mines are located on a branch of the Illinois Central Railroad in Alabama known as the Winnfield district. This branch is 8 miles in length, and entirely disconnected from the rest of the Illinois Central Railroad system. Coal from this branch is hauled over the line of the Frisco system between Winnfield, Ala., and Aberdeen, Miss., a distance of 57 miles, and thence over the Illinois Central Railroad to Grenada, a total distance of 235 miles. The Piper mines are located on a branch line of the Southern Railway extending from Birmingham, Ala., to Gurnee Junction, Ala. Coal from these mines to Grenada moves over the Southern Railway and the Southern Railway in Mississippi to Winona, Miss., thence over the Illinois Central Railroad to destination, a total distance of 277 miles. From all these mines, with the exception of the Piper mines, the rate to Grenada is \$1.80 per ton. From the Piper mines to Grenada the rate is \$2 per ton.

From the foregoing it will be observed that the St. Louis & San Francisco Railroad participates in the movement from the Brilliant mines to Grenada and the Southern Railway in Mississippi in the movement from the Piper mines. These roads are therefore necessary parties to any proceeding involving rates of transportation over their lines. The proper defendants not having been joined in the attack on the rates from the Brilliant and Piper mines, the rates from these mines can not under the act be herein considered.

The following table is a comparison of the rates and distances from Herrin, Sturgis, and Wheatcroft to Grenada with other points on the Illinois Central system:

*Rates on coal per 2,000 pounds.*

To—	From—					
	Herrin.		Sturgis.		Wheatcroft.	
	<i>Miles.</i>	<i>Rate.</i>	<i>Miles.</i>	<i>Rate.</i>	<i>Miles.</i>	<i>Rate.</i>
Grenada, Miss.....	329	\$1.80	348	\$1.80	345	\$1.80
Winona, Miss.....	352	1.25	371	1.25	368	1.25
Jackson, Miss.....	440	1.60	459	1.60	456	1.60
New Orleans, La.....	624	1.50	643	1.50	640	1.50
Greenwood, Miss.....		1.25		1.25		1.25
Hollandale, Miss.....		1.55		1.55		1.55
Belzona, Miss.....		1.55		1.55		1.55

Grenada is intermediate to Winona, Jackson, and New Orleans from the Illinois and Kentucky mines.

The price of cottonseed oil is fixed by the Chicago and New York markets. The representative of the Grenada Oil Mill testified that coal constitutes about 15 per cent of the entire cost of manufacturing oil, and that by reason of the low rates to the other points mentioned that company is placed at a disadvantage in the manufacture of oil. As further showing that the rates complained of are unreasonable, complainants assert that two ice plants which had been in operation at Grenada were forced to discontinue the manufacture of ice on account of the high rate on coal.

The Illinois Central Railroad seeks to justify the rates from mines located on its lines to the points used in the comparisons on the ground of competition with coal from Walker county, Ala., mines located on the Southern Railway. From Corona, Ala., a representative point in the Walker county mining district, the latter road publishes rates on coal as follows:

*Rates on coal per 2,000 pounds.*

From—	To—	Miles.	Rate.
Corona, Ala.....	Winona, Miss.....	153	\$1. 10
	Greenwood, Miss.....	181	1. 10
	Jackson, Miss.....	242	1. 45
	Hollandale, Miss.....	246	1. 40
	Belzona, Miss.....	216	1. 40

At New Orleans there is competition with rail carriers from mines in Alabama and also water competition on the Mississippi River from the coal mines in the Pittsburgh (Pa.) district.

Grenada being practically a local point on the line of the Illinois Central and the circumstances and conditions surrounding the traffic to that point being dissimilar to those to the points of comparison used by complainant, such comparisons should be considered accordingly.

At the present rate, coal from the Kentucky mines to Grenada produces 5.1 mills per ton per mile and from the Illinois mines 5.47 mills. The report of earnings filed by the Illinois Central Railroad for the year ending June 30, 1911, shows an average per-ton-per-mile revenue of 6.09 mills on all traffic, and on bituminous coal 3.56 mills per ton per mile. It is stated of record that in 1909, 37½ per cent of the total tonnage of the Illinois Central was coal. Upon the record we are of opinion and find that the rates from Herrin, Wheatcroft, and Sturgis to Grenada should not exceed \$1.60 per ton. The decision herein will not be construed as affecting any proceeding under the fourth section of the act. An order will be entered in accordance herewith.

No. 4167.

CHAFFIN COAL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY  
COMPANY.

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*Submitted October 9, 1911. Decided June 3, 1912.*

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Rate of \$1.75 per ton applied on a carload of coal screenings from Chicago, Ill., to Platteville, Wis., not found to have been unreasonable. Complaint dismissed.

*Michael F. Gallagher* for complainant.

*William Ellis* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in coal, with its principal place of business at Chicago, Ill. Its petition, filed June 12, 1911, alleges that unreasonable charges were collected by defendant for the transportation of a carload of coal screenings from Chicago to Platteville, Wis. Reparation is asked.

The shipment moved from Grape Creek, Ill., on the Chicago & Eastern Illinois Railroad, December 24, 1909, but only the rate charged by the Chicago, Milwaukee & St. Paul Railway from Chicago to destination is in issue.

There was no specific commodity rate on coal screenings, and the established rate of \$1.75 per ton on soft coal was applied from Chicago to Platteville. There was contemporaneously in effect from Chicago, Ill., to Mineral Point, Wis., a rate of 60 cents per ton on coal screenings and dust. Mineral Point and Platteville are respectively about 181 and 188 miles from Chicago, and are located on two different branches of the Chicago, Milwaukee & St. Paul Railway, which converge at Calamine, Wis. Complainant contends that in view of the 60-cent rate to Mineral Point the rate of \$1.75 charged on the shipment to Platteville is excessive and unreasonable.

The answer of the Chicago, Milwaukee & St. Paul Railway avers that dissimilarity of circumstances and conditions and greater volume of traffic to and from Mineral Point justify lower rates to that point.



The shipment here involved consisted of soft-coal screenings, and defendant states that there is no competition between the soft-coal screenings shipped to Platteville and the commodity which moves to Mineral Point on the 60-cent rate, and that therefore no discrimination exists.

The testimony is that soft-coal screenings are a low grade of coal, but are valuable as fuel; that hard-coal screenings are a waste and are of little commercial value. A concern at Mineral Point has found that by having this commodity moved from Chicago hard-coal docks on a 60-cent rate, it could be used to advantage in fluxing zinc ore.

Under the circumstances, we think that the rate on hard-coal screenings should not be used as a measure of the reasonableness of the rate applicable on soft-coal screenings. Although there are cases in which the rates on soft-coal screenings are somewhat lower than rates on higher grades of soft coal, it would be wholly impracticable upon the few facts of record in the case now before us to fix any differential under the coal rate.

The rate of \$1.75 on soft coal to Platteville is based upon a differential of 15 cents over the rate on the same commodity to Mineral Point, and counsel for defendant intimated that in view of an error in the publication of the 60-cent rate, it would be satisfactory to the defendant if the Commission would award reparation on the basis of a rate of 75 cents per ton, made by the use of the 60-cent rate plus the 15-cent differential, providing no order requiring the maintenance of that rate for the future was entered. We can not look with favor on this proposition. There is no evidence tending to show that complainant has sustained any actual damage. Furthermore, a rate of 75 cents per ton on soft-coal screenings would be entirely out of line with the rate of \$1.75, which is applicable on all other grades of soft coal to Platteville and it would be inconsistent with rates to other points in that territory. In other words to grant the petition would be the equivalent of ordering a reconstruction of the coal rates in that territory, which it would not be proper to do in the present proceeding. The proposition of defendant does not constitute an admission that the rate charged was excessive.

Upon consideration of all the facts disclosed by the record, we are unable to find that the rate of \$1.75 per ton was or is excessive or unreasonable. The complaint must therefore be dismissed, and it will be so ordered.

No. 3988.

JACKSON & PERKINS COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted October 6, 1911. Decided June 6, 1912.*

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Complainant assails the refrigeration charges on certain shipments of nursery stock from points in California to Newark, N. Y., as excessive and unreasonable. The shipments moved via northern routes under bills of lading containing these instructions: "Ice at first icing station, then seal and close hatches and keep closed to destination." Some were reiced in transit and some were not. They were charged a rate of \$70 per car, which is the regular charge for perishable freight that requires continuous refrigeration throughout the entire haul. Complainant's traffic is shipped only during the winter months, and when moved via northern gateways does not require refrigeration after passing out of the warm climate of the early part of the journey. Upon the facts of record; *Held*, That the charges were unreasonable to the extent that they exceeded \$40 per car, which is found to be a reasonable charge for the refrigeration service stipulated for in the bills of lading, and, under like conditions, should be applied in the future. Reparation awarded.

*George C. Perkins* for complainant.

*H. A. Scandrett* for Southern Pacific Company and Union Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant is a corporation engaged in the nursery business, with headquarters at Newark, N. Y. Its nursery stock is in part grown in California. By petition, filed April 5, 1911, it alleges that it was charged an excessive and unreasonable rate for refrigeration on six carloads of nursery stock from McPherson and McFarland, Cal., to Newark. Reparation is asked.

In January and February, 1909, complainant shipped over the lines of defendants Southern Pacific Company; San Pedro, Los Angeles & Salt Lake Railroad Company; Union Pacific Railroad Company; Chicago & North Western Railway Company; Chicago, Indiana & Southern Railroad Company; Lake Shore & Michigan Southern Railway Company; and West Shore Railroad Company from McPherson, Cal., to Newark two carloads of nursery stock; and in January and February, 1910, it shipped over the lines of defendants Southern Pacific Company;

Union Pacific Railroad Company; Chicago & North Western Railway Company; Lake Shore & Michigan Southern Railway Company; and West Shore Railroad Company, from McFarland, Cal., to Newark four carloads of the same commodity. Refrigeration charges were collected on each of the shipments at a rate of \$70 per car, amounting in the aggregate to \$420. This claim was filed with the Commission October 8, 1910.

On the bill of lading under which the first shipment from McPherson moved, complainant's California agent indorsed the following instructions: "Ice at first icing station, then seal and close hatches and keep closed to destination." Similar instructions as to closing of hatches and keeping closed in transit were given as to the four shipments from McFarland, as appears from indorsements on the bills of lading under which those shipments moved. Moreover, as to three of them it was expressly stated that the cars were not to be reiced in transit. Complainant was not able to produce the bill of lading covering the second shipment from McPherson, but it is shown by evidence of record that that shipment also moved under the same instructions as to refrigeration.

Complainant has grown nursery stock in California for eight or nine years, and for several years it made shipments from the points named to eastern destinations without refrigeration. Under that method some losses from heating in transit were sustained, and in 1908 complainant gave instructions for refrigeration by one icing at the point of origin, the same as given with respect to the shipments in question, and was charged for the one icing only. On one car a charge of \$15 was collected for the one icing and on another a charge of \$22. Other shipments appear to have been made in 1908, but the exact amounts charged for refrigeration are not shown. Under the one-icing method shipments were made for the two seasons of 1908 and 1909 without loss from heating. The shipments of 1910 appear to have been reiced in transit despite the complainant's written instructions to the contrary. No reason appears of record why complainant's instructions were not followed as they previously had been. The charge of \$70 per car which began with the shipments of 1909 has been since continued.

Complainant insists that one full icing at point of origin is amply sufficient to carry a shipment of this traffic through the warm part of the journey, after which the danger is from cold rather than heat, and further icing is not only unnecessary but detrimental. The evidence of record fairly supports this view. It is contended, under the circumstances, that \$70 per car is an unreasonable charge, and complainant asks that a charge of \$15 per car to cover one icing only be established and that reparation be awarded for past shipments on that basis.



The tariffs in force at the time the shipments moved named a refrigeration rate of \$70 per car on "perishable freight not otherwise specified." Nursery stock was not specifically named, and therefore the \$70 rate was charged.

The charge is the same under the tariffs whether shipments move to the east via El Paso, Texas, or via Ogden, Utah, that is, whether through southern or northern gateways. The two shipments from McPherson moved via Salt Lake and the four from McFarland via Ogden. The southern route is not used for shipments to northeastern destinations.

Defendants contend that the charge for one icing only on shipments prior to 1909 was a mistake, and that it would be impracticable to establish and enforce a refrigeration rate applicable to shipments via northern routes lower than or different from the rate via the southern gateway, for the reason that such a course would engender competition amongst the carriers and tend to the advantage of those whose lines are favored by the colder climate.

These refrigeration rates are fixed by an organization known as the Pacific Fruit Express Company, but the tariffs prescribing the charges are published by the Southern Pacific Company. The rate to points in the southeast is the same as the rate to points in the northeast, although the southern movement is through a warm climate for the entire distance, while the northern movement encounters a warm climate for a comparatively short distance only.

While nursery stock shipped to points in the southeast may, and perhaps does, require continuous refrigeration for the entire haul, such continuous service is not required to secure the safe movement of shipments of this traffic via the northern gateways. The movement of nursery stock from the Pacific coast to eastern points is not on a large scale. It constitutes a very small percentage of perishable freight carried by the transcontinental lines. The refrigeration charge is the same as that applied to other nonspecified articles, such as fish, packing-house products, butter and eggs, and beer, commodities that move in large quantities and generally throughout all seasons of the year. Nursery stock moves only during the winter months.

The amount of ice required for one icing at point of origin is about  $5\frac{1}{2}$  tons, and the cost ranges from \$2.50 to \$3.50 per ton. Perhaps a fair average would be \$3 per ton, which would make the average cost of the ice \$16.50 per car.

The shipments moved under a freight rate based on a released valuation of \$5 per 100 pounds. The car minimum is 20,000 pounds, but the traffic does not load to the full minimum weight. The average released value per car was about \$800.

The evidence is to the effect that one full icing at the point of origin is sufficient to insure entire safety from heating unless there is delay in the early part of the movement due to negligence by the carriers.

There is no attack upon the reasonableness of the charge of \$70 per car as applied to perishable freight that moves during the warm season as well as at other seasons, but it is urgently insisted that the same character of continuous and costly service is not required for complainant's traffic and that for this reason a less charge should be provided.

Upon the record we are of opinion and find that the charges collected were unreasonable, and that an amount per car sufficient to cover the cost of one full icing at point of origin, together with the additional cost of hauling the ice and of necessary repairs to the bunkers, with a fair profit on the transaction, is, in view of the instructions contained in the bills of lading, all that defendants could reasonably charge in this case.

The average amount of ice consumed when reicing is furnished throughout the entire trip is about 13 tons. In the case of *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, to which the carriers defendants herein were parties, the Commission held that a fair average cost for hauling ice in refrigerated cars loaded with oranges or lemons from the Pacific coast to Chicago, Ill., is about \$20. Also it was held in that case that \$5 a trip is a reasonable estimate for the cost of repairs to bunkers, on shipments not reiced in transit. Under the facts of this case, we think that \$10 per car would fully cover the additional cost to carriers for hauling the ice, including cost of loading into bunkers, and that \$5 a trip would cover the expense for repairs to the bunkers. This would show that the elements of the cost of refrigeration of the traffic under consideration would not be greater than the following:

Cost of—

Ice.....	\$16. 50
Repairs.....	5. 00
Hauling ice, including expense of putting into car.....	10. 00
Total.....	31. 50

After allowing a reasonable profit on the transaction and considering the freight charges for transportation from points of origin to destination, we are of the opinion that \$40 per car would be a reasonable charge for icing the traffic here involved, shipped in carloads from and to the points in question, in all cases where shippers stipulate in their bills of lading that but one icing is required, and such icing is furnished to the extent of 5½ tons of ice. Defendants will be required to so adjust their refrigeration tariffs as to make them accord with the views herein expressed.

We further find that complainant made the several shipments in question in accordance with the facts herein stated, and paid refrigeration charges thereon at the rate herein found to have been unreasonable, and that complainant has been damaged to the extent of the difference between the amount which it paid and the amount which it would have paid on the basis above found reasonable, and that it is, therefore, entitled to an award of reparation in the sum of \$180, with interest on \$60, part thereof, from March 1, 1909, and on \$120, the residue thereof, from March 1, 1910. An order will be entered in accordance with the findings herein announced.

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No. 2469.

ANADARKO COTTON OIL COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted January 20, 1912. Decided June 4, 1912.*

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Upon further consideration of the original record in connection with additional evidence presented at a supplemental hearing, complaint dismissed.

*Flinn, Chambers & Lowe* for complainants.

*T. J. Norton* and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*Fred H. Wood* for St. Louis & San Francisco Railroad Company.

*W. W. Miller* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

*C. B. Bee* for Corporation Commission of Oklahoma.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This proceeding is supplemental to that of the same title reported in 20 I. C. C., 43, in which rates on the products of cottonseed, including oil, hulls, cake, meal, and linters, from producing points in Oklahoma to Kansas City, South Omaha, Denver, St. Louis, Chicago, Louisville, and Cincinnati on the north, and New Orleans, Galveston, 24 I. C. C.



Fort Worth, Dallas, Sherman, and Greenville, Texas, on the south, were involved. Except for a few points in the northeastern part of the state, near the Arkansas line, all stations in Oklahoma are grouped under one rate. Generally speaking, it was the group rate that was attacked in the original proceeding, particularly in its application to Cincinnati, Kansas City, Louisville, and St. Louis, and neither the complainants nor the defendants suggested that the complaint be dealt with on any other than the group basis. The Commission failed to find that the rates on any of these products other than oil were unreasonable, but upon the facts then appearing it did express the view that the rates on cottonseed oil to Kansas City, Galveston, Fort Worth, Dallas, Sherman, and Greenville were excessive. The Commission was not of the opinion that the rates on oil to Cincinnati, St. Louis, and Louisville were unreasonable. No order was made, but the case was held open for 90 days for the carriers to submit, in accordance with the suggestion of the Commission, a proposed readjustment of the group rate as a whole, or, if preferable, by subdividing the group or by fixing individual rates. The carriers failed to agree upon and submit to the Commission a proposed readjustment upon either of these plans, and as the Commission was not wholly satisfied with the adequacy of the record before it as the basis for a specific order, the case was set down for further hearing, with a view to making a specific order upon whatever basis the situation might demand.

At this hearing complainants contended that owing to the influences that fix the market price of cottonseed oil, the reduction to Kansas City suggested by the Commission in its report would be of little or no advantage to them without similar reductions to St. Louis, Cincinnati, and Louisville, and that the effect of an order in accordance with its findings would be to center the cottonseed-oil trade at Kansas City to the exclusion of these other markets.

The defendant carriers also urged the Commission to reconsider the case upon the old record and upon the additional evidence which they desired to present. They represented that the case originally grew out of another proceeding, in which was attacked the rate on cottonseed from points in Oklahoma, Arkansas, Mississippi, Tennessee, and Missouri to East St. Louis; that the present complainants were invited by the carriers to intervene in opposition to that reduction; that in addition the intervening complainants attacked independently the rates on cottonseed oil from Oklahoma mills, not only to St. Louis, but to the other markets named as well; that this complaint was nevertheless considered by them at the time to be largely incidental to the East St. Louis case with which it was heard; and that failing to realize in full the importance and extent of the

issues as to the rates on cottonseed products, the case was not as carefully and thoroughly presented as it should have been.

In this connection the following extract from complainants' reply brief, following the second hearing, is pertinent:

It appears from Mr. Johnson's [assistant freight traffic manager of the C., R. I. & P. R. R. Co.] testimony that he called the attention of complainants in this case to the East St. Louis case, and requested them to become interested and assist the railroads in maintaining the present adjustment.

Perhaps Mr. Johnson is correct in his statement in this regard. It does not follow, however, that the complainants are guilty of ingratitude by intervening and asking for a readjustment of the rates on cottonseed oil.

Shortly after or about the time the East St. Louis case was filed the railroads at a conference decided to increase the rate on cottonseed oil out of Oklahoma two cents a hundred, without a corresponding raise or even a change of any character from the rates in Arkansas.

This information was communicated by Mr. Johnson to the complainants, and immediately thereafter an attempt was made to prevent the increase and secure a reduction that would harmonize the rates of Oklahoma with those from other mills in the southwest.

At this rehearing the carriers therefore brought to the Commission's attention a much wider range of comparisons, both of the rates on cottonseed oil and on other commodities in this general territory, and the original evidence was further analyzed in its application to the rate adjustment and the effect of any disturbance thereof.

Upon further consideration of the record as thus extended the Commission is not satisfied that it was correct in its view that the Kansas City and Texas rates in issue should be reduced, and that there is no substantial dissimilarity in the conditions of transportation from those attending Arkansas points of origin, which were the chief sources of comparison. Comparisons also are now for the first time brought to our attention of rates on petroleum and its products, including refined oil, fixed by the Commission from Kansas City and numerous Kansas points to Oklahoma destinations, many of the rates involving practically the reverse of the present hauls on cottonseed oil. These rates are substantially higher than the rates here complained of, although the commodity is of much less value.

While perhaps not so pertinent a comparison, the rates fixed by the Commission on wheat from Wichita, Kans., to Texas destinations are enlightening on the general level of rates on other commodities in the southwest, which is a consideration not to be disregarded. If, considering its value, we should condemn the rates on cottonseed oil to Kansas City and these Texas destinations, it is difficult to see how, upon comparison of value and other proper considerations, the rates on these other commodities, and perhaps still others, would not be equally subject to revision. The Commission can not be unmindful of the serious effect upon the carriers' revenues of such channel reductions.

Many of the individual rates to Fort Worth, Dallas, Sherman, and Greenville from the Oklahoma group carrying the 25-cent rate can not be justified even by comparison with the shorter distance rates from other groups. The minimum distance from this group is 71 miles and the maximum distance is 330 miles. But whatever may be the Commission's authority to deal with group rates as such, without regard to differences in distance from the individual stations within the group under a long haul from the group as a whole, it is doubtful whether the Commission could make a lawful order as to these particular rates, in view of the great disparity in distance resulting from the large area of the group and its unusual proximity to the various destinations; and the record does not furnish a satisfactory basis for an order fixing rates from the specific stations in the group.

Therefore, considering the original and supplemental evidence as a whole, we are constrained to dismiss the complaint. It will be so ordered.

24 I. C. C.



No. 4338.

MANUFACTURERS & MERCHANTS' ASSOCIATION OF NEW  
ALBANY, IND., ET AL.,

v.

ABERDEEN & ASHEBORO RAILROAD COMPANY ET AL.

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*Submitted May 26, 1911. Decided June 6, 1912.*

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New Albany, Ind., is situated on the north bank of the Ohio River, opposite to Louisville, Ky. The cities are connected by bridges. The freight charge or toll of the bridge companies for the use of their tracks from Louisville to New Albany averages about 1 cent per 100 pounds. The local rate of the carriers operating over the structures averages about 2 cents per 100 pounds. Generally speaking, rates from New Albany to the territory south of the Ohio and Potomac and east of the Mississippi rivers (except the states of Kentucky and Tennessee) are the same as from Louisville. In the reverse direction Louisville and New Albany are carried on the same basis from certain points, while from a large part of the territory the New Albany rates are the bridge toll higher than to Louisville. On shipments from the south to New Albany for beyond, the Louisville basis of rates is applicable. With the above exceptions rates from this southern territory are made by adding to the rate to Louisville the full local rate (as distinguished from the bridge toll) thence to New Albany. As a general proposition, rates from the south to other north-bank Ohio River crossings—Cincinnati, Evansville, and Cairo—are the same as rates to the south bank. Complainants allege that the practice of defendants in making their rates from the south to New Albany on a basis higher than to Louisville subjects New Albany to undue prejudice and disadvantage. Allegations of the petition sustained and the carriers ordered to cease and desist from such discrimination.

*Hines & Norman* for complainants.

*R. Walton Moore* and *Charles J. Rixey, jr.*, for Southern Railway Company and numerous other defendants.

*Wm. A. Northcutt* for Louisville & Nashville Railroad Company.

*Edw. Barton* for Baltimore & Ohio Southwestern Railroad Company.

*J. P. Gardner* for Louisville, Henderson & St. Louis Railway Company.

*Chas. H. Gibson* for Pennsylvania Terminal Railway Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

*W. M. Mitchell* for Kentucky & Indiana Bridge Company.

## REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

New Albany, Ind., is a city of about 25,000 inhabitants, and is situated on the north bank of the Ohio River, opposite to Louisville, Ky. The cities are connected by bridges, which are operated by the Louisville Bridge Company and the Kentucky & Indiana Terminal Railway Company, respectively. The bridge companies are not operating carriers, their revenues being derived exclusively from the collection of tolls, which while differing in amount are uniform so far as the character of the traffic is concerned, whether local between Louisville and New Albany or through Louisville from or to points south of Louisville. The bridge toll is deducted by the carriers before prorating and added to the division of the through rate accruing to the lines north of the river. It is thus seen that this charge is a matter for settlement between the different carriers and is something with which the shipper has no connection. The toll averages about 1 cent per 100 pounds. On local shipments between Louisville and New Albany the rate charged by the carriers performing the service of transportation over these structures, under arrangements as later explained, averages about 2 cents per 100 pounds. On all traffic from south of the Ohio and Potomac and east of the Mississippi rivers rates to New Albany, with certain exceptions to be referred to, are constructed by adding to the rate to Louisville this full local charge of 2 cents for the service across the bridge. Generally speaking, rates to and from the other north-bank Ohio River crossings, Cincinnati, Evansville, and Cairo, are the same as the rates to and from the south bank at Covington, Henderson, and East Cairo. The petition alleges that the practice of defendants in constructing rates to New Albany from this southern territory on a higher basis than to Louisville subjects New Albany to undue prejudice and disadvantage, and prays that the Commission shall enter an order in removal of this discrimination by requiring the carriers defendant to establish rates to New Albany which shall not exceed their rates contemporaneously in effect to Louisville, the south-bank point; or, if not entitled to the Louisville rate, that the differential in excess thereof shall in no event exceed in amount the bridge toll, instead of the local rate, beyond Louisville. In addition to this complaint against the rates in general the petition specifically calls into question the adjustment on pig iron, manufactured iron, hides, and lumber, the latter originating largely in Arkansas; and further attacks the legality of a switching tariff of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway covering a service at New Albany proper. Reparation is asked.

The Southern Railway is the only carrier that reaches New Albany from the south. The Illinois Central crosses to the north bank of the river at Cairo and Evansville, and the Louisville & Nashville to the north bank at Evansville and Cincinnati, but the rails of neither of these carriers extend beyond the south bank at Louisville. The Southern, Monon (Chicago, Indianapolis & Louisville), and Baltimore & Ohio Southwestern railways cross the Kentucky & Indiana Terminal Railway Company's bridge from New Albany to Louisville. It appears, however, that practically all of the defendants of record which operate south of the river participate in joint rates to New Albany and the other north-bank crossings referred to.

The actual service of transportation over the Louisville bridge is performed by the Pennsylvania Terminal Railway Company, a corporation owned by the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, which latter carrier also controls a majority of the stock of the bridge company. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway in turn is controlled by the Pennsylvania lines, which operate north of the Ohio River. The Pennsylvania Terminal Railway Company collects from the shipper and in turn is paid by the Bridge Company out of its toll. The Bridge Company publishes a schedule of its tolls, but does not participate in any joint rates. The Terminal Company participates in through tariffs and in addition files a schedule of its local rates.

The Kentucky & Indiana Terminal Railway Company (referred to hereinafter as the Kentucky & Indiana Bridge Company) is owned jointly by the Baltimore & Ohio Southwestern, Monon (Chicago, Indianapolis & Louisville), and Southern railways, and is operated as a joint terminal of these carriers and of the Southern Railway in Kentucky, the stock of which is owned by the Southern Railway. The Southern and Louisville & Nashville railways own 76 per cent of the preferred and 94 per cent of the common stock of the Monon. Like the Louisville Bridge Company, the Kentucky & Indiana Bridge Company is not an operating carrier, its traffic being handled by the proprietary line to whose industry in New Albany the freight is consigned. The Kentucky & Indiana Bridge Company does not publish a schedule of its tolls, but they, together with the local rates of the tenant lines, are identical in amount with the similar charges over the Louisville bridge. Formerly the Kentucky & Indiana Bridge Company did publish a tariff of its charges, but the schedule was canceled shortly after the decision of the Commission in *Railroad Commission of Indiana v. K. & I. B. & R. R. Co.*, 14 I. C. C. 563, in which the Commission held that these charges, having been filed with it, must be used in constructing through rates from the south to New Albany. The proprietary lines do not pay any tolls to the Kentucky & Indiana Bridge Company, but any deficit in



operating expense of the bridge is made up by them on a tonnage basis.

Generally speaking, from central freight association territory rates to Louisville are higher than to New Albany by the amount of the bridge toll, and from eastern seaboard cities the two points are on an equality. To the south and southeast (except the states of Kentucky and Tennessee) the southern carriers absorb the bridge charge from New Albany. In the reverse direction, from Virginia common points on the Chesapeake & Ohio Railway (and until recently from Virginia common points on all lines); from Lexington and Lexington & Eastern junction, Ky.; from local stations on the Nashville, Chattanooga & St. Louis Railway; from Mobile, Gulfport, and Pensacola (commodity rates only); from New Orleans and Port Chalmette; and on the commodities sugar, molasses, and sirup from New Orleans and vicinity there is no increase over Louisville in the rate to New Albany. From points covered in Hinton's tariff, I. C. C., No. A-5, which includes, generally speaking, all common and basing points and many local stations in the territory east of a line drawn from Harri-man Junction south through Chattanooga, Corinth, and Mobile, rates to New Albany are the bridge toll higher than to Louisville, except on pig iron and manufactured iron, and except also that the Louisville & Nashville, Nashville, Chattanooga & St. Louis, and Western & Atlantic railways are not parties to this tariff. With the above exceptions, rates from the south and southeast to New Albany are made by adding to the Louisville rate the full local rate over the bridge, as distinguished from the bridge toll.

On shipments from this southern territory to New Albany destined beyond, the carriers absorb the cost of the service from Louisville to New Albany, with the result that while the rate to New Albany proper is the combination on Louisville, the same shipment, if destined to the first station north of New Albany, is given the benefit of the Louisville rate for that portion of the haul up to New Albany.

As to placing New Albany and Louisville upon an equal basis from Virginia common points and from Lexington and Lexington & Eastern junction, Ky., the carriers offer no explanation. They state that the adjustment to New Albany on the Louisville basis of the commodity rates from Mobile, Gulfport, and Pensacola, of the class and commodity rates from New Orleans and Port Chalmette, and of the commodity rates on sugar, molasses, and sirup from New Orleans and vicinity is the result of an error in tariff publication; that the establishment of the same basis of rates to the two cities from eastern seaboard ports is due to the action of the northern trunk lines, which also are responsible for the adjustment by which rates from central freight association territory to Louisville are higher than to New Albany only by the amount of the bridge toll. The equality in

rates of Louisville and New Albany from Nashville, Chattanooga & St. Louis local stations is explained in this way: Rates southbound from New Albany to Nashville, Chattanooga & St. Louis stations are based on Chattanooga, Nashville, and other junction points, and as New Albany is on the Louisville basis to the junction points, it therefore takes the same basis through to final destination. For convenience the carriers then give New Albany the benefit, in the reverse direction, of the same relative adjustment with reference to the south bank. The carriers do not state why the parity of treatment is maintained to the junction points on which the through rates base, but they say that very little class-rate traffic is originated by the Nashville, Chattanooga & St. Louis, and that on the commodities of large tonnage, such as lumber, pig iron, and iron pipe, New Albany is charged a differential over Louisville. The explanation of the New Albany rates in Hinton's I. C. C. A-5 on basis of the bridge toll over Louisville is in a general way that they were due to a misinterpretation of the Commission's decision in the *Kentucky & Indiana Bridge case, supra*; and with reference to the application of Louisville rates southbound from New Albany the contention is that in that adjustment the carriers have given New Albany something to which in reality that city is not entitled, it being further stated that when that adjustment was made, many years ago, there was no business of importance at New Albany. In justification of the Louisville rate to New Albany on shipments for beyond, an adjustment, as stated, denied as to New Albany proper, it is urged that the service is much less on the former shipments than on the latter, as testified to in detail.

With reference to the other north-bank crossings, it is insisted that competitive conditions are met with there which are not encountered at New Albany. It is argued that the Cincinnati, New Orleans & Texas Pacific (Cincinnati Southern) makes the rate to Cincinnati, but that this carrier reaches no other Ohio River crossing; that the Louisville & Nashville serves both Cincinnati and Evansville but stops at the south bank at Louisville; that the Illinois Central has rails into Evansville and Cairo from the south but, like the Louisville & Nashville, terminates at Louisville; and that while the Southern Railway crosses the river to New Albany as one of the proprietary lines of the Kentucky and Indiana bridge and has a circuitous route to Evansville via the north bank, that carrier is in no way responsible for the relative adjustment of the rates as between the north and south banks at Cairo, Evansville, or Cincinnati. It is conceded that a majority of the stock in the corporation which controls the operation of the Cincinnati, New Orleans & Texas Pacific Railway is owned by the Southern Railway which, as stated, serves New Albany and Evansville from the south, but the contention is that these carriers have different officers and are independent in operation.



Defendants strongly urge that neither the local rates to Louisville nor the local charge of the bridge carriers, separately considered, are under attack; that each of these charges must therefore be impliedly admitted to be reasonable; and that, this being so, should the Commission enter an order prescribing Louisville rates as maxima to New Albany from the south, it would amount to a requirement that the carriers shall accept less than a reasonable charge for the transportation to Louisville, and that they shall perform the service of transportation across the bridge to New Albany, which entails much expense in the facilities afforded, without compensation.

In the latter contention the carriers ignore the principal basis of complaint, which is the alleged unduly discriminatory character of the rates under consideration when compared with what the carriers have voluntarily done in the absorption of the bridge charge at other north-bank Ohio River crossings. The petitioners do not contend that if New Albany were the only north-bank crossing it would be improper, in constructing rates to that point, to add to the Louisville rate a reasonable compensation for the service over the bridge; and it is perhaps true that while upon such facts the carriers might voluntarily absorb a part or all of the bridge charge, the Commission could not order them to do so; but the principle is equally sound and well established that, having elected to diminish their revenues in the absorption of all or a part of this charge on their traffic generally to other north-bank Ohio River points, the carriers may not arbitrarily refuse to adopt the same relative adjustment with respect to the rates under consideration unless it can be made to appear that the conditions surrounding the transportation of the traffic to which they apply are substantially dissimilar.

It may be admitted, as alleged by defendants, that the Cincinnati Southern makes the rate between Cincinnati and the southeast, and that the necessity exists for the equalization to the Cincinnati basis of the other north-bank Ohio River crossings on business for beyond; and, as stated, as to such traffic the carriers have seen fit to place New Albany on a parity with Evansville and Cairo by the application thereto of the Louisville or south-bank rate; but what is not satisfactorily explained is why the same conditions which bring about this equalization as to territory beyond New Albany do not bring about the same result on business to New Albany proper, as they do on local shipments to Evansville and Cairo; why, in other words, New Albany should be singled out from the other north-bank points and from points beyond as the only city which is compelled to pay, on through business from the south, an extra charge for the bridge service from the south bank. Competition of the Cincinnati Southern can not be said to require this absorption at Evansville proper any more than



it can as to New Albany proper, as that carrier does not reach Evansville, and by no reasonable route could traffic consigned locally to Evansville be deflected from the Evansville carriers to the Cincinnati Southern through Cincinnati. It is shown that the southern carriers' own bridges span the river at Cincinnati, Evansville, and Cairo, but as to Evansville it is testified by defendants that "the adjustment [crossing equalization] was in operation southbound before the bridge was constructed, but that does not alter the fact, because we ran a transfer. The fact that we reach Evansville with our own rails makes a material difference."

It is insisted by defendants that there exists a difference in the competitive conditions at the other north-bank points, particularly at Evansville. Repeated efforts to ascertain the nature and extent of this alleged competition resulted practically in the mere statement of its existence. It is testified that "the conditions which brought about the application of the rates from Cincinnati and Evansville, as well as the rates from the south-bank points of Louisville and Henderson, are responsible for the adjustment of the north-bank rates." Asked to state specifically what competitive conditions exist at Evansville it was stated that "they vary; on coal from Henderson division, Evansville being the same as Henderson, at Evansville we meet the competition of coal mined in Indiana; at Henderson we meet the competition of coal mined in Henderson." It is also stated that "the Illinois Central operates in there. The Southern Railway operates in there, but theirs is a very indirect route;" and that "it is a gateway competition." It will be borne in mind that both the Illinois Central and Southern railways are defendants in this proceeding. Asked the question, "Assuming that you are going into New Albany with your own rails, or in connection with some bridge company or terminal company, what competitive conditions are there at Evansville that do not exist at New Albany," the reply was, "The adjustment into those points is a very old one. We have the through routes operating, taking Mississippi Valley territory, operating by the west bank of the river and around through Cairo to north-bank points, and we have the competition of the other lines, which has brought about the existing adjustment to that point. So far as points on the Louisville & Nashville are concerned, our local stations, we make Evansville rates higher than Henderson." It is further said that "Evansville is placed on the Cincinnati basis as an equalization proposition originally." It follows that we can not accept these general statements as establishing the dissimilarity in conditions alleged.

Upon a careful analysis of the evidence we are not convinced of the defendant carriers' justification for the exception of New Albany from their general policy in dealing with north-bank Ohio River

crossings with respect to absorption of the cost of transfer from the south bank. Apparently the carriers themselves as early as 1894 indicated in a general way their recognition of the propriety of the basis now requested by complainants, as shown by the adoption of the following resolution at a meeting of the Southern Railway & Steamship Association in October of that year:

Whereas rates have been adopted by the association from many important common points in the southeast to Ohio River points, Memphis and Nashville, Tenn.: Therefore be it

*Resolved*, That pending the adoption under association rules of a basis for such rates that rates on classes and commodities published in the commissioner's southeastern freight tariff may, when not in conflict with the rates already established under association rules, and after being issued by the commissioner, be applied in the reverse direction. This basis is proposed only as a temporary measure until properly adjusted westbound rates can be established.

There is some conflict in the testimony as to what extent this resolution affected New Albany during the period of its operation.

The action of the Southern Railway, as indicated in the following extract from the testimony of its representative, is also significant:

Question. Now, has it not been the position of the Southern Railway Company for the last two years or more, beginning as early as August 31, 1909, that the rate on all commodities from southern points—well, in view of what we have said we will omit pig iron—from southern points, not the Hinton territory, but from southern points to New Albany, Ind., proper, should be the through rate bridge toll higher than the rates to Louisville?

Answer. We gave that notice.

Question. You gave that notice. Didn't you state that in your opinion the regular bridge tolls should be applicable on through business originating in the south and destined to New Albany?

Answer. I don't know as we gave that—don't think we expressed any opinion about it at all, except as indicated by our notice.

Question. Your notice would indicate that that was what you thought.

Answer. Yes, and there were several things that entered into the extending of that notice. Some of our people construed the opinion of the Commission in the case of the Indiana Railroad Commission versus the K. & I. as obligating the Southern Railway to do that. Some of our officers felt that way about it, particularly at first; and at the same time we were having constant and urgent appeals from the New Albany manufacturers for lower basis of rates. New Albany is largely dependent upon the Southern Railway for protection; we handle most of their business inbound and most of it outbound, and with some of those lumber concerns and woodworking concerns, whose competitors have certain transit conditions south of the river, it is right hard for them to compete in New Albany, as the same transit arrangements are not effective in New Albany from the south as in Louisville, as testified to by Mr. McLean. That has had something to do with the action taken by the Southern Railway in filing that notice.

Apparently, therefore, the adjustment last referred to has not been carried out because of refusal of the other southern lines to participate therein. Such an adjustment, in the absence of the element of discrimination, would perhaps be all that complainants could



reasonably expect; but the complaint, when based upon what the carriers have done at the other north-bank Ohio River crossings, is presented to the Commission in an entirely different light.

We are therefore of opinion and find, considering all the facts, circumstances, and conditions appearing, that in maintaining from the territory south of the Ohio and Potomac and east of the Mississippi rivers, and on lumber from Arkansas, rates to Cairo, Ill., Evansville, Ind., and Cincinnati, Ohio, on the north bank of the Ohio River, which include no toll or charge for the bridge service from either East Cairo, Ky., Henderson, Ky., Covington or Newport, Ky., on the south bank of that river, while contemporaneously maintaining from the same points of origin to New Albany, Ind., on the north bank of said river, rates higher than to Louisville, Ky., on said south bank, by the amount of the bridge toll or charge, defendants are subjecting complainants and shippers of New Albany, Ind., to undue and unreasonable prejudices and disadvantages, from which an order will be entered to cease and desist.

It is our further finding and conclusion, following the principles announced in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, that reparation should not be awarded.

It is our understanding that these findings dispose of the specific complaints against the rates on pig iron, manufactured iron, hides, and lumber; and we are without sufficient evidence to pass upon the reasonableness of the switching charge provided for in Pittsburgh, Cincinnati, Chicago & St. Louis terminal tariff, I. C. C. No. P-289, which is also the subject of complaint. There are also certain alleged violations of the fourth section of the act, which will be disposed of under the carriers' general application for relief.

An order will be entered in accordance with these views.

24 I. C. C.



## THE TRANSIT CASE.

No. 3002.

### IN THE MATTER OF THE INVESTIGATION INTO THE SUBSTITUTION OF TONNAGE AT TRANSIT POINTS.

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*Submitted April 15, 1912. Decided June 5, 1912.*

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1. The act to regulate commerce as amended gives to the Commission adequate power to regulate transit privileges, and it may upon full hearing prescribe such rules and regulations therefor as will in its opinion free the operation of transit privileges from illegal practices.
2. Since the last report of the Commission on the subject of transit privileges, 18 I. C. C., 280, certain carriers have attempted to comply with the views of the Commission, while other carriers have either paid little attention thereto or have wholly ignored what was then said, and a condition of great inequality has thus grown up in the handling of grain and its products under tariffs according to transit privileges.
3. A recent investigation made by the Commission, on its own initiative, into the operation of the transit privileges reveals gross violations of law in various sections of the country.
4. Considering all the circumstances and conditions appearing from the investigations of the Commission, it is *Held*: That the respondents shall be required to establish rules for the policing of transit privileges on grain and grain products which shall require—*a.* Certificates as to the transportation character of all grain contained in a transit house; *b.* That a daily report shall be furnished by the receiver of a transit privilege which shall state the required information as to the contents of a transit house, if any of said contents is accorded a transit privilege; *c.* That there shall be recorded with the policing authority of the carriers, within a reasonable time after the shipments have been received at transit point, all paid expense bills; *d.* That all surplus billing shall be canceled absolutely at the close of each business day; *e.* That the railroad billing of the inbound and outbound movement shall describe with sufficient particularity the commodity upon which the transit privilege is accorded; *f.* That the outbound billing shall show full reference to the inbound billing; *g.* That the transit privilege shall be limited absolutely to one year, at the expiration of which time all privileges shall cease and full local rate, commodity or class, both into and out of the transit point, shall apply; *h.* That there shall be deducted an arbitrary loss in process of milling wheat of not less than 1 per cent of the weight of the wheat; in the malting of barley of not less than 16 per cent of the weight of the barley; in the drying of corn of not less than 10 per cent of the weight of the corn; in the shelling of corn of not less than 20 per cent of the weight of the corn; and in the cleaning and clipping of grains of not less than 1½ per cent of the weight of the grain; and *i.* That in according the transit privilege upon the products of grain milled or treated in transit, the policing authority shall be required to balance the outbound movement of the product against the inbound movement of the grain upon the basis of well-known average ratios of the products of the grain. This same general principle shall be applied to mixed feed.

*C. R. Hillyer* for the Interstate Commerce Commission.

*Henry M. Allen, George H. Lewis, and A. Menckel* for Central Freight Association Millers.

*Charles J. Austin* for New York Produce Exchange and Bureau of Trade & Transportation.

*Charles T. Ballard* for Ballard & Ballard Company.

*Charles Barham* for Nashville, Chattanooga & St. Louis Railway.

*M. F. Baringer and Hubert S. Horan* for Commercial Exchange of Philadelphia.

*John H. Bell* for Nashville Grain Exchange.

*Alfred Brandeis* for Grain Shippers of Louisville.

*H. C. Burnett* for Lehigh Valley Railroad Company.

*J. J. Campion* for Carolina, Clinchfield & Ohio Railway Company.

*W. M. Casey* for Rea Patterson Milling Company.

*Martin E. Casto, Emmitt V. Hoffman, Henry Lassen and C. V. Topping* for Southwestern Millers' League.

*Robert W. Chapin* for Chapin & Company.

*M. S. Connelly* for Pennsylvania lines west of Pittsburgh.

*W. T. Cornelison* for Peoria Board of Trade.

*Charles M. Cox* for Boston Chamber of Commerce and New England Millers.

*J. W. Craig* for Dunlop Mills.

*Milton L. Cushing* for J. Cushing & Company.

*George D. Dixon and Walter Thayer* for Pennsylvania Railroad Company.

*G. H. Eaton* for Boston & Maine Railroad and Maine Central Railroad Company.

*Edward D. Evans* for Evans Milling Company.

*Archibald Fries* for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railroad Company.

*A. P. Gilbert and W. S. Bronson* for Chesapeake & Ohio Railway Company.

*Henry L. Goemann and F. O. Paddock* for Toledo Produce Exchange and others.

*A. L. Goetzmann* for Millers National Federation.

*D. M. Goodwyn* for Louisville & Nashville Railroad Company.

*W. M. Hopkins* for Board of Trade of Chicago.

*Hubert J. Horan* for Buffalo Flour Milling Company and Quaker City Flour Mill.

*F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company.

*Francis B. James and E. E. Williamson* for Receivers and Shippers Association of Cincinnati.

*Frank Kell and B. R. Neal* for Texas Millers.

*S. L. Lewis* for Lewis & Adcock.

*J. H. Limberger* for Central Freight Association roads.

- J. C. Lincoln* for St. Louis Merchants Exchange.  
*C. W. Lonsdale* for Kansas City Board of Trade and others.  
*R. S. McKellar*, *R. H. Morris*, and *Claudian B. Northrop* for Southern Railway Company.  
*R. O. McCormack* for Fort Worth Freight Bureau and Texas Grain Dealers Association.  
*J. B. McLemore* for Southeastern Millers Association.  
*W. H. Marshall* for Southwestern Missouri Millers Club.  
*W. W. Miller* for Missouri, Kansas & Texas Railway system.  
*E. V. Mitchell* for Smith, Northam & Company, Limited.  
*R. Walton Moore* and *M. P. Callaway* for associated railways.  
*E. R. Newman* for Wabash Railroad Company.  
*A. C. Palmer* for Mixed Car Millers Association.  
*Charles B. Pierce* for Chicago Grain Dealers and Board of Trade.  
*H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company.  
*Paul P. Rainer* for Joint Rate Inspection Bureau.  
*J. R. Ruffin* for Norfolk & Western Railway Company.  
*William Ainsworth Parker* for Baltimore & Ohio Railroad Company.  
*George A. Schroeder* for Milwaukee Chamber of Commerce.  
*Herbert Sheridan* for Baltimore Chamber of Commerce.  
*C. R. Stafford* for Memphis Merchants Exchange.  
*Paul Wadsworth* for Delaware & Hudson Company.  
*James Webster* for New York Central lines.  
*George A. Wells* for Western Grain Dealers Association.  
*Cyrus S. Weiss* for Miner-Hillard Milling Company.  
*H. V. White* for White Milling Company and others.  
*H. W. Woolf* for Southern Weighing and Inspection Bureau.  
*C. C. Wright* for Chicago & North Western Railway Company.  
*Benjamin W. Brown* and *C. M. Bullitt*.  
*A. G. Welch* for Mixed Car Dealers' Association in trunk line territory.

#### SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

On May 3, 1910, our report *In the Matter of the Substitution of Tonnage at Transit Points*, 18 I. C. C., 280, was issued setting forth in detail numerous departures from lawfully published rates caused by unlawful practices prevailing at transit points. All of such practices were condemned, and what was considered the correct interpretation of the law was clearly outlined and the cooperation of shippers and carriers was requested to the end that future violations might cease. As regards the handling of grain, there has been but little improvement. A further investigation, therefore, has been instituted, which forms the subject matter of this report.



Prior to 1906 it was doubtful to what extent the Commission was authorized to go in the regulation of transit privileges. Since then all doubt may be said to have been removed by the amendments to the act to regulate commerce, section 1 of which now provides that:

The term "transportation" shall include \* \* \* all services in connection with the \* \* \* elevation \* \* \* and handling of property transported; and it shall be the duty of every common carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor \* \* \*. All charges made for any service rendered or to be rendered in the transportation of \* \* \* property \* \* \* as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful \* \* \*.

This section imposes upon the carrier the duty to provide and furnish at just and reasonable charges, transportation, including elevation and the handling of the property transported. Section 6 then imposes upon the carrier the duty of publishing and filing with this Commission schedules stating all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates, fares, and charges, or the value of the service rendered to the shipper or consignee. It then prohibits departures from such published charges as well as the granting of any privileges or facilities other than those specifically set forth in its tariffs. This section further defines the carrier's duty, and in the following language of section 15 there is outlined the authority of this Commission to regulate transit privileges:

Whenever, after full hearing \* \* \* the Commission shall be of opinion that any \* \* \* regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe what \* \* \* regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, \* \* \* and (the carrier) shall conform to and observe the regulation or practice so prescribed.

As we said in the *Wool case*, 23 I. C. C., 151, it is impossible to compare the 15th section as it stood prior to the amendment of 1906 with the same section to-day without reaching the conclusion that it was the intention of the Congress to invest this Commission with full authority over interstate rates and all regulations or practices entering into those rates and determining their value and availability to individuals or communities. As to their reasonableness or discriminatory effect transit privileges, and all rules or regulations in connection therewith, are subject to the regulating authority delegated by the Congress to this Commission, and in the exercise of that authority rules and regulations susceptible of possible discriminatory or other unlawful application may be condemned and other rules or regula-

tions prescribed, and to this end we may require a strict accounting, not only of interstate transit and nontransit tonnage, but local intrastate tonnage as well. *I. C. C. v. Goodrich Transit Co.*, 224 U. S., 194, decided April 1, 1912.

Conference Rule No. 76-A, promulgated June 29, 1909, was adopted following numerous complaints from shippers to the effect that their competitors at transit points, were, by various substitutions, avoiding the payment of the published rates. The rule follows:

#### SUBSTITUTING TONNAGE AT TRANSIT POINT.

A milling, storage, or cleaning in transit privilege can not be justified on any theory except that the identical commodity or its exact equivalent, or its product, is forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible to forward from transit point on transit rate commodity that did not move into that transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the tariff rate or rates. It is not practicable to require that the identity of each carload of grain, lumber, salt, etc., be preserved, but, it is not lawful to substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. That is to say, oats or the products of oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley, nor may shingles be substituted for lumber, nor lumber for shingles, nor may rock salt be substituted for fine salt, nor fine salt for rock salt; likewise oak lumber may not be substituted for maple lumber, nor pine lumber for either oak or maple, nor may hard wheat, soft wheat, or spring wheat be substituted either for the other. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise.

To the end that abuses now existing at transit points may be eliminated, carriers will be expected to conform their transit rules and their billing to the suggestions of this rule. In the event of the failure of any carrier so to do, reductions of legal rates caused by transit abuses will be regarded as voluntary concessions from legal rates.

When this rule was promulgated it was the object of attack from various quarters on the ground that it was too strict, and that its enforcement would deprive shippers of the full enjoyment of transit privileges. For the purpose of determining whether or not there was need for a modification of this ruling, in 1909 and 1910 an exhaustive investigation was had, the result of which convinced the Commission that so lax had become the practices at some of the transit points that there was urgent need for the strict enforcement of a rule fully as stringent as No. 76-A, and no modification was made.

As a result of the conclusions reached by the Commission in that investigation, stated in its report, 18 I. C. C., 280, known as opinion No. 1247, certain of the carriers undertook to make their tariffs naming transit privileges comply with the law.

Speaking now with reference only to the transit rules respecting the transportation of grain and its products, there was some action



on the part of the interests involved toward conforming to the law. Numerous conferences were held in various sections of the country by representatives of transportation and business interests, and since that time many new sets of transit rules have been filed with the Commission that in some respects are less open to censure than those previously in force. In some sections the matter was taken up vigorously by the carriers and shippers, and as a result, the rules made effective have, it is claimed, substantially met the requirements of the law; in other sections carriers drafted sets of rules which upon their face appeared to be commendable, but after delays and conferences with shippers the rules finally filed and published did not conform to the requirements. Some carriers, however, have failed to proceed in good faith or in a manner such as a proper respect for the regulating statute would naturally dictate, and such carriers and shippers have, by placing their own construction upon the Commission's opinion No. 1247 dealing with transit, cited this opinion as authority for all manner of evil practices.

The result is that to-day we find a condition whereby dealers and millers of grain and grain products, located in different parts of the country and competing with each other, are now subjected to transit rules and policing thereunder so diverse in character as to produce grave inequalities.

The carriers in the southeast assert with much earnestness that they have provided a method of inspection and policing of transit privileges on grain and grain products that is as nearly correct and in accordance with the law and the views of the Commission as can be made. The general freight agent of the Louisville & Nashville Railroad, speaking for the carriers of the southeast and the Mississippi Valley in his testimony at the hearing, stated the position of these carriers to be as follows:

Shall these rules of ours, which are confessedly more rigorous than those in other territories, and shall this inspection of ours, which we believe to be more rigorous than the inspection in other territories, be continued, to the prejudice, I might say, of the people who are compelled to use them, or shall we loosen the rigidity of our inspection in order that the people located on our lines may be enabled to meet the competition in the territory that both sets of shippers serve? That is all there is to it, we say.

There can not, in my judgment, be two sets of equally correct conclusions from the same premises. Either we are right in our rules or in our inspections, or we are wrong.

When all is said, our rules can properly be considered as an interpretation. If we have interpreted too literally, too stringently, we, in connection with the grain men and millers, would be very glad indeed to have the Commission set us straight. \* \* \*

We believe that substantially uniform rules and practices should prevail throughout this entire country.

We do not believe that when we interpret, as honestly as we can, these rules and principles, and it shall have been said that our interpretation is correct, that the people



who honestly and fairly work under those rules, and commit themselves to that inspection and policing, should be thereby subjected to a distinct and positive disadvantage as compared with those who live under a different and less serious set of rules.

In this connection it was stated on behalf of certain of the respondents as follows:

Can what we believe to be an improper and undue and unfair preference and advantage against which they labor as compared with other sections be removed? If it can we want to know whether it shall be removed by adopting a uniform set of rules in that territory the same as ours, *or whether we have the Commission's authority to take their rules and their methods of policing and establish them in our territory.*

To the extent that undue preference exists to-day in connection with the enjoyment of transit privileges, such preference is due to the fact that the transit rules themselves and the enforcement of the rules in one territory are not what they are in others. In other words, varying constructions have been placed upon the law in the promulgation of transit rules.

In one section of the country we find large commercial interests subjecting themselves to transit regulations which have not been prescribed by the carriers but which have been voluntarily undertaken by the shippers for the purpose of bringing their business into conformity with the law.

Many of the great grain-carrying roads of the northwest, where the grain tonnage is very large, have left the matter of transit privileges open to unlawful practices by the shipper in defiance of the law, and it may be added that the investigations of the Commission disclosed the existence of almost universal unlawful practices in this territory.

We do not regard the situation as one calling primarily for relief from unjust discrimination or undue preference under sections 2 and 3 of the act. It is true that there are certain carriers extending from one territory into another which have published transit rules in one section which restrict enjoyment of the transit privileges to a far greater degree than do the rules at other points on their lines in adjoining and competing territory. We must bear in mind these considerations, but we should not narrow the real question before us. The abolition of undue prejudice and unjust discrimination could readily be accomplished by uniform rules that would provide a minimum of restriction to the transit privileges, the result of which would promote the very practices which the Commission seeks to eradicate. The mandate of the law is plain. The sole purpose of the transit rules is to so regulate and police the application of the privilege that the aim of the law shall not be defeated. We must look to the transit rules which are filed with the Commission from this viewpoint, and accordingly as they do or do not accomplish their purpose, either in what they provide or fail to provide, they must stand or fall.

Upon reopening the transit investigation the Commission fully realized that great diversity of views had arisen since it last dealt with the subject. No order was entered at the conclusion of the former investigation. The Commission had ascertained what the general situation was, and pointed out the evils, after carefully considering the tariffs and the practices prevailing. It was assumed at that time that having gone that far it could well leave the matter with the carriers to so frame their rules and police this transportation as to minimize to the smallest degree the opportunity upon the part of shippers to evade the law. It is primarily the duty of the carrier to do this.

The grain business of the country is one of vast proportions and involves millions of dollars in revenues to the carriers. In transporting the grain and its products from the fields of surplus production to the consumers of the south and the populous east, and for export, practically all of the carriers in interstate commerce participate. There is competition among them in the handling of this immense tonnage; this and probably other considerations have produced a marked diversity of views as to what transit rules and regulations should require.

At the recent hearing in this proceeding all parties in interest were duly notified, given full opportunity to be heard, and were examined on behalf of the Commission as to the practices prevailing in connection with the operation of the transit privileges on grain and its products, and particularly as to what changes, if any, were necessary in order to eradicate unlawful practices. It was doubtless natural that the information and testimony obtained in this more or less voluntary manner failed to disclose to the fullest extent the infractions of the law which are possible and which are in fact going on under certain sets of rules now in force. It was noteworthy that particular localities and interests that are the beneficiaries of illegal practices under the transit privileges took no active part in the hearing, doubtless upon the theory that they had nothing to gain and something to lose by a change from the present status.

In order that the Commission might have before it all sides of the question, it detailed a force of its examiners of accounts to investigate in various sections the conditions under which transit privileges are operative. This investigation covered the country quite generally and thoroughly.

The former opinion of the Commission detailed at some length the illegal practices which were then admitted to be prevalent, and it will not be necessary to cover that ground again. It is sufficient to say that the conditions there disclosed have continued quite generally down to the present time throughout entire transportation terri-



tories. Violations of the law shown in the present investigation include the following practices:

The illegal transfer of billing to a shipper who is not entitled to a transit privilege thereon; illegal transfer of grain not accompanied by the proper billing and the application to such grain of illegal transit; the according of transit to a shipment which under the tariffs should be "representative" of the inbound movement, but which was not so "representative;" according transit to shippers far in excess of their transit credits; the permitting of retention of billing after grain had been disposed of; the movement of transit and non-transit articles in the same carload without tariff authority therefor; the use of transit after the expiration of time limit named in the tariffs; the using of expense bills covering grain destroyed by fire on other grain; the substitution of the products of one kind of grain for the products of another kind of grain; the according of transit privileges on nontransit ingredients of mixed feeds; the illegal use of surplus billing accumulated by reason of the difference between the actual weights and the minimum weights of the inbound movement, also accumulated by less-than-carload nontransit movements out, by movements to nontransit points, by local consumption, by movement out by water, by loss of grain in transit, and by shrinkage; the plain substitution of one grain for an entirely different grain; the movement out, pound for pound, of products which could not have been derived from the inbound grain, and with no allowance for offal; and the palpable manipulation of billing and defeating the rates in cents per 100 pounds.

The Commission is thoroughly advised as to many of the illegal practices in vogue and shall proceed to take such action as the law provides for the punishment for and prevention of such unlawful practices.

The former opinion stated that the Commission would not then undertake to prescribe a set of transit rules for the carriers. It was our view, and still is, that the carriers should initiate their own rules. However, after two elaborate investigations into the subject and several years of observation, we are convinced that there are certain fundamental restrictions that should be placed upon the extension of these privileges, and that we should therefore carefully weigh all considerations and enter an order requiring the respondents to incorporate in their tariffs naming transit privileges, such restrictions as we find shall be necessary in order to safeguard the application of the tariffs.

These privileges had grown up, and the Commission found them in full vigor when the act to regulate commerce became a law. In the earlier cases we hesitated, in the absence of power to regulate transit, to lend our approval to the practice. In fact, many carriers



and shippers insisted that the practice be abolished altogether and that flat rates be substituted in lieu thereof. However, to-day transit has become a practice of such universal prevalence upon all the railroads that it has become as much the duty of this Commission under the law as amended to supervise and regulate these rules and practices as the rates, rules, and practices generally of all interstate carriers. It may be that absolute uniformity throughout the country in transit rules and regulations can not be brought about, but there can be established such uniformity as to insure that traffic will be conducted in accordance with the plain provisions of law. In other words, there must be uniform observance of the law, and all interests will then be placed upon a basis of equal opportunity, and abuses that are now justly complained of can be prevented.

At the outset we have been confronted with the contention that the only substitutions which are regarded as unlawful are those that defeat the rates. There are, of course, substitutions which defeat the rates and substitutions which may not. As a broad general proposition we hold that all substitutions are a violation of the law and must be eradicated or minimized to the last degree.

The business man who employs the transit privilege looks upon it as a useful and in many cases as an exceedingly profitable practice. Indeed, we recognize that in most instances transit is now a commercial necessity, because of its almost universal application and on account of the development which certain lines of business have taken entailing heavy investments.

There is only one way to minimize violations of the law at transit points and that is by the adoption of unambiguous rules and the proper policing thereof to reduce the opportunity for such violations.

We are told that our rule against substitution of white corn for yellow corn at a transit point should be rescinded, because there might be substitution of white corn for white corn that would violate the tariff. Similar criticisms have been insistently advanced with respect to other views which we have expressed on the subject.

It will not do to say that a particular regulation is burdensome and unnecessary because the practice which it prevents might not defeat a through rate.

This brings us at once to the conclusion that the rules must contain sufficient protection to the movement to show readily whether the transaction is a lawful one or not. We shall require that the rules be so framed as to give such information.

Throughout this investigation considerable misunderstanding was manifest as to the nature of the commodity that lawfully might be moved out of a transit point under a transit rate. We can not appreciate the necessity for this confusion, and are inclined to attrib-

ute it in most instances to an unwarranted misconstruction of our previous expressions. Viewed in the broad light of a remedial statute, a consideration of the purposes for which the act to regulate commerce was enacted would clear up most of the apparent misunderstanding. The underlying principle of this act is the elimination of unjust discrimination and extortion. The act is an aid, not a hindrance, to commerce and must be given such reasonable construction as makes to that end. The theory under which a transit privilege is granted is that the inbound commodity will be subjected to certain treatment and afterwards moved out under the balance of the through rate. To express the ideal—the identical commodity, in its original or other commercial form, should move from the transit point.

But commercial conditions render this impossible, and we must therefore look for such regulation as will subserve both the purposes of the act and of our commerce. Manifestly such substitution as corn of one color for that of another, of spring wheat for winter wheat, or of other commodities analogous only by their comprehension under a generic term, is in accord neither with the spirit of the law nor the theory under which transit is extended. However, it sometimes happens that grains of different kinds may move into a transit point under the same transit rates, and such commodities, after being there milled, mixed, or otherwise subjected to treatment, move out to their final destination on the balance of the through rate which is the same for the mixed commodity as would obtain had they moved separately.

Under these conditions the published rates are in no wise defeated and no preference is extended to one shipper over another. This we do not regard as a substitution, and in our opinion the practice, if properly policed, is not in contravention of the principle of the act. Where a commodity must of necessity lose its actual identity, as in the case of grain going into an elevator, it would be absurd to say that such identity must be preserved. Nor do we think this view properly subject to such interpretation as may be violative of the law, for it is incumbent alike upon shippers and carriers to see that there is actually on hand at the transit point sufficient and proper inbound tonnage to justify the outbound movement.

The duty to properly and effectively police its transit privileges devolves primarily upon the carrier, and the interposition of no agency can relieve it of that responsibility. However, experience has demonstrated that because of negligence, inefficiency, pressure of other duties, or the enormity of the task, every station agent can not be relied upon adequately to assume the rôle of inspector, and bureaus have been established charged with the performance of this policing. We believe this to be the most practicable system yet devised and are inclined to favor its general adoption. Through a



few of these bureaus an almost perfect check is kept of the inbound and outbound shipments, excess billing is canceled daily, and daily and monthly reports are required from the transit houses; through others the system is not so thorough and leaves room for much improvement. At points where there is not sufficient business to justify the maintenance of an independent inspector, the agent of the carrier might also act as agent of the inspection bureau, but he should be subject to the frequent check and constant supervision of the bureau. What we say in approval of the inspection-bureau system must not be understood as transferring the responsibility of the carrier to the bureau. We recognize the establishment of these bureaus as agents of the carriers in the discharge of a duty imposed upon them by law.

#### THE COMMODITY AND THE BILLING.

Unlawful practices are shown to result from a failure to regulate both the railroad billing upon which the transit commodity moves, and the commodity itself.

The representative of the railroad delivers and receives the grain or products at a transit point, to and from the transit house. The carrier, through its inspection bureau, must follow the commodity taking transit throughout its pause at the point of transit. It remains an article of interstate commerce as long as it is subject to a transit tariff, and this period must be continuous. It therefore follows that the records of the transit house, in so far as they are subject to the tariff rules, are railroad records as defined in section 20 of the act, and are subject to the control and inspection of both the respondents and the Commission. In order that both the commodity and the records of the transit house shall be properly policed, the carrier and the representatives of the Commission must have access at all times to the transit house, its contents, and its records, if the transit house contains any portion of a commodity upon which a transit privilege may be claimed. If the identity of the grain is lost in the transit house, its proper policing requires information concerning the entire contents of such transit house. It is our conclusion upon the record that the rules shall provide that at the time of each shipment certificates shall be furnished by those shipping out of a transit house as to whether or not the commodity is entitled to a transit privilege, and also whether the commodity has or has not theretofore been accorded a transit privilege, and if any commodity entitled to a transit privilege has been mixed with the contents of a transit house, such certificates shall be furnished as to each and every shipment therefrom. This requirement is vital for the proper application of both the inbound and outbound rates, and also for the proper cancellation of surplus billing.



Our inquiry has disclosed in many instances large amounts of surplus billing on hand, which were speedily canceled when our representatives appeared upon the scene. Where a transit house has surplus billing on hand for several million pounds of grain which has disappeared from its possession, as was disclosed in several instances by the Commission's inquiry, it is clear that the commodity has not been policed by the carrier in accordance with its plain duty.

Upon the basis of our investigations it is our opinion that there shall be required a daily report from the transit house to the policing authority which should show at the close of business each day a classification of receipts and shipments of the total movement into and out of the transit house, if any of the commodity contained therein is to be accorded the right of transit. This report should show all tonnage handled through the transit house as follows: All grain and grain products handled, point of origin of the grain and destination of the product, and whether received or forwarded by rail, boat, wagon, or otherwise, which record must clearly show, in pounds, separately: Grain received by rail; grain received by boat; grain received by wagon; grain transferred from elevator to mill; grain products forwarded by rail (local or nontransit); grain products forwarded by boat (local or nontransit); grain products disposed of locally (by rail or wagon); grain products forwarded by rail (transit); grain products forwarded by boat (transit); grain products transferred; total tonnage on hand.

It is fundamental that if any of the grain moving through a transit point is to have transit privileges the total movement must be under the surveillance of the policing authority. For the purpose of enabling the police department to know that all the requirements of the rules in so far as the proper application of rates and the collection of charges on tonnage passing through the transit house, it is our conclusion that it is necessary for the rules to require that there shall be recorded with the policing authority all paid expense bills within a reasonable time after the shipment has been received. This record is further necessary in order to advise the bureau of the transfer of tonnage from one transit house to another. It is our further conclusion that the rules must require that the surplus billing, that is to say, all billing which does not represent grain actually on hand, shall be canceled absolutely at the close of each day. This daily cancellation down to the basis of stock on hand is vital and we shall insist on a literal adherence thereto. As was stated by the chief of one of the inspection bureaus:

The protection I think comes in by keeping their expense-bills tonnage down to their stock on hand. If they were permitted to hold all of their expense bills, I think they could do a great deal of manipulating. \*Wherever we are policing these transit arrangements we have found enormous amounts of surplus expense-bill tonnage which

we have canceled. I think that has done more good toward preventing illegal substitution and impairing the integrity of the through rate than almost any feature of our work.

This view was strongly indorsed by the traffic witness on behalf of the central freight association carriers.

Our investigations disclose that unlawful practices result from the failure of the carriers to require the railroad billing upon which the traffic moves and upon which charges are collected to show in sufficient detail the exact character of the commodity transported. It is our conclusion that the railroad billing shall show sufficient detail to prevent unlawful substitution. That is to say, the billing should state whether white corn, yellow corn, mixed corn, white oats, red oats, mixed oats, hard wheat, soft wheat, etc. Where the billing does not show this information, it must be obtained by the owner in certificate form from some proper authority, or other satisfactory evidence must be furnished the carrier at or before the time when the commodity or its products are forwarded. It is our further conclusion that the outbound billing should show full reference to the inbound billing.

#### TIME LIMIT.

Upon the facts disclosed of record in this case, we are of the opinion and find that in order to prevent unlawful practices the tariffs shall contain a rule prohibiting the application of a transit privilege upon presentation of expense bills after a period of twelve months from the date of said expense bills.

The important thing in this connection, however, is that the expiration of the time limit prescribed in the tariffs means that the commodity has then become localized; that all transit privileges accorded to the commodity shall absolutely cease, and that full local rates, commodity or class, shall be assessed for any movement of the commodity whatsoever. Furthermore, the rates theretofore collected upon the commodity shall after the expiration of the stated period be corrected to the basis of a movement wholly separate and apart from any idea of associating said movement with a transit privilege. In other words, the rates shall then be the local rates both into and out of the point of transit.

#### DIVISION OF GRAIN PRODUCTS.

In regulating the application of the transit privilege to the milled products of grain in central freight association territory a general provision broadly prohibiting substitution is all that the tariffs contain. This method has proven wholly unsatisfactory. Some millers regulate their billing in accordance with the products of the mill, while others refuse to do so upon the stated excuse that there is nothing in



the rules which now gives to the policing authority any specific power in the premises, and the bureau finds itself with nothing upon which it can lay hold for the purpose of properly regulating the division of the tonnage. This situation obtains generally throughout the country, with the exception of the southern and Mississippi Valley territories.

The transit rules in force in these territories provide for an arbitrary division of the products of grain. For instance, flour mills are required to ship out as the product of wheat 69 per cent of flour and  $29\frac{1}{2}$  per cent of offal, with an invisible loss of  $1\frac{1}{2}$  per cent. From grist-mills there may be shipped in transit hominy and meal, 74 per cent; offal,  $24\frac{1}{2}$  per cent; with an arbitrary invisible loss of  $1\frac{1}{2}$  per cent. Meal mills may ship  $92\frac{1}{2}$  per cent of meal and 6 per cent of offal, with  $1\frac{1}{2}$  per cent invisible loss.

While no specific objection was advanced on behalf of the millers of this territory against this rule, except in so far as the lack of such a rule in other territories placed them at an undue disadvantage, the millers from other sections of the country strongly resist the theory of arbitrary percentages of products. The Commission gave this matter particular attention upon the recent hearings for the purpose of developing whether it was possible to dispose of this vexed subject upon an arbitrary basis, because, for obvious reasons, if such a treatment could be given it, we should require it to be done. Evils were disclosed where there was no arbitrary division of products that would necessarily have been largely minimized had arbitrary percentages been required.

The general average of the ratio of products that may be derived from a given quantity of grain of a particular kind when put through milling process is well known, as was demonstrated upon the recent hearings. The respondents and millers should take due and proper notice of these average ratios. From the necessities of the case a certain amount of leeway must be permitted in this regard which from our knowledge of the situation we think can temporarily be left with the policing authority, and we shall at this time refrain from ordering in arbitrary divisions of grains into products.

In order that this important feature of transit shall not place undue restraint upon one section of the country or operate to the disadvantage of the smaller millers, and for the purpose of securing that uniformity of regulation to which the milling industry of the country as a whole is entitled and which it is our present aim to substantially prescribe, we find that the respondents should be required to embody in their tariffs a rule requiring the policing authority to daily balance the outbound movement of products against the inbound movement of the grain upon the basis of the well-known average ratios of



the products to the particular grain, the actual divisions to be balanced at intervals not less than four times a year, quarterly. The millers will then know from the tariffs themselves that their billing will be canceled to correctly represent the weight of the grain from which the products could have been manufactured, and the responsibility will then rest directly upon the policing authority.

#### MIXED FEED.

We are of the opinion that the same general principles as to the balancing of the material or grain account against the products moving from the transit point shall apply uniformly to mixed feeds, based upon a knowledge of the industry. This question of mixed feeds has been recently passed upon in *Memphis Hay & Grain Asso. v. St. L. & S. F. R. R. Co.*, 24 I. C. C., 609, wherein it was held that when a commodity was manufactured from materials more than 20 per cent of which was of nontransit material, it should no longer be entitled to transit privilege but should be considered a separate and distinct commodity and take a rate specifically prescribed therefor from the transit point. This disposition of the mixed-feed question greatly simplifies the application of transit thereto.

In assessing rates upon mixed feed to and from the point of transit, it shall be proper to assess the rates upon the portion of the tonnage lawfully entitled thereto under the tariff upon the basis of the transit privilege, and the balance, if the shipment moves in carload quantities, may be assessed at the local carload rate from the transit point.

#### CANCELLATION OF BILLING FOR LOSS OF WEIGHT IN MILLING OR TREATING OF GRAINS.

In certain transportation territories the rules provide that in the milling or treating of grain arbitrary deductions shall be made for what is termed the invisible loss that occurs in the process. This arbitrary deduction for wheat is in some tariffs 1 per cent, and in others  $1\frac{1}{2}$  per cent. In still other territories the matter is left open for an estimated deduction at certain periods of time from one month to one year, with a further provision that "whenever" the mill is weighed up the matter should be again readjusted, either by the allowance of additional tonnage or cancellation of tonnage. In other instances we find the carriers relying upon the integrity of shippers who are expected to have this shrinkage in mind when certifying that they are entitled to transit. Upon the recent hearing witnesses from all sections of the country were interrogated on behalf of the Commission with respect to this matter, and this record as a whole will justify the conclusion that there is uniformly a loss of weight in the process of milling wheat, which, though small, is nevertheless uniformly present and therefore can not be ignored in

the transit rules. From actual figures it is shown that this invisible loss ranges as high as 2 per cent, and upon the record it is our conclusion that there should be a daily deduction in the milling of wheat of not less than 1 per cent of the weight of the grain milled. No other practical way has been demonstrated upon the record of actually reaching this feature, and we know that evil practices are indulged in where the deduction is not made, or where it is left entirely to estimates, weighing-up periods which may never come around, or where it is left to be voluntarily deducted by the shipper.

The rules must also take notice of this loss in the manufacture or treatment of other grains. For example, it is shown in this proceeding that in the malting of barley there is a loss in weight on an average of 16 per cent of the weight of the grain; in the drying of corn the shrinkage ranges from 10 to 20 per cent of the weight of the grain in the shelling of corn there is a loss of approximately 20 per cent; in the milling of corn there is a loss of from 1 to 2 per cent; in the cleaning and clipping of grains there is a loss of from  $1\frac{1}{2}$  to 2 per cent.

Upon the record we are of opinion and find that in extending transit privileges upon the products of wheat a daily deduction of 1 per cent shall be made of the inbound weight of the wheat when said wheat has been manufactured at the transit point; that in extending a transit privilege upon malt there shall be a daily deduction from the inbound weight of the barley of 16 per cent; that in extending a transit privilege upon corn that has been dried at the transit point there shall be a daily deduction from the weight of the corn of 10 per cent; that in extending a transit privilege upon corn which has been shelled at the transit point there shall be a daily deduction from the weight of the corn of 20 per cent; that in extending a transit privilege upon the products of corn milled at the transit point there shall be a daily deduction from the weight of the corn of 1 per cent; and that in extending a transit privilege upon grains that have been cleaned and clipped at the transit point there shall be a daily deduction from the weight of such grains of  $1\frac{1}{2}$  per cent; the actual loss to be balanced and deducted by the policing authority at intervals of not less than four times a year, quarterly.

In view of the prime importance attaching to the question of proper transit rules and regulations, and the manifold details in which the whole subject is involved, we shall retain the present proceeding upon our docket for the purpose of making such further inquiries into the situation as a whole or into any particular feature of transit, and the proper regulation thereof, or for the purpose of entering such additional or amended orders upon the present record as may appear necessary.

An order will be entered on the basis of the conclusions and findings herein announced.



PROUTY, *Chairman*, dissenting:

In my opinion many forms of transit are of benefit and should be encouraged rather than discouraged, and this is especially true of the milling of grain in transit. Without wishing to enter upon any general discussion of the subject I do desire to call attention to one phase of the matter which should receive special consideration in view of the present tendencies in the making of rates on grain and grain products.

Carriers now maintain from several important primary markets what are termed reshipping rates upon grain and the products of grain. These rates are based upon the assumption that the grain is moved by rail into the point from which they apply, but no evidence of that fact is required when the out movement occurs, nor is any account taken of the point of origin in applying the reshipping rate.

There can be no question that this system of rate making offers many desirable features. It has been approved by this Commission recently in two cases in which such rates from Chicago and from St. Louis were under consideration. We have recently suggested that similar rates should be established at Memphis and have ordered a rehearing of the case brought by grain interests at Sioux City, Iowa, with a view to putting in the same system of rates at that point.

It is evident, however, that such in-and-out rates can not be established at all small interior points at which the milling industry is conducted, and the present practice is to provide for these points by the establishment of a milling-in-transit privilege. Rates are so adjusted that from a given point of origin to a given destination the through rate is the same as the sum of the reshipping rates, so that the interior miller enjoys in theory the same rate as does his competitor located at a reshipping market.

While, however, this is so in theory, the interior miller rests under certain serious disabilities, if the transit rules in the past enunciated by this Commission are to be rigidly adhered to.

There is often, and perhaps generally, a milling-in-transit penalty which the miller at the reshipping point does not pay, and there is also the inconvenience of the various policing regulations, which of necessity are more or less burdensome.

But the real difficulty under which the interior miller labors is in not being able to combine in the same carload transit and nontransit stuff and in being compelled to recognize in the use of transit both the point of origin and the point of destination.

The producer of mixed feed at St. Louis, for example, ships out the entire carload at the reshipping rate which is applicable to the grain product, irrespective of the source from which the various



ingredients have been obtained. The manufacturer of the same article at some point between St. Louis and the seaboard market can only apply his transit to a portion of the carload, and is obliged to pay, or rather has been obliged to pay, the less-than-carload rate upon the nontransit portion of the carload.

In grinding wheat the interior miller must send approximately 70 per cent along as flour and the balance as offal, while at St. Louis the miller may send his flour to one point and his offal to another, irrespective of the kind of wheat which he grinds or the point from which he obtains it.

The investigations of this Commission leave no reasonable doubt that if reshipping rates are to be applied at the principal markets, and if strict rules of transit like those enforced to-day in the southeast are to be maintained, the only possible result is to concentrate the milling industry at the primary market. This in my opinion is neither a wise nor a just thing. As an economic proposition I believe that rates of transportation should be so adjusted that the small miller at the interior point may operate under the same transportation charge as does his competitor at the great city. There is no reason in the transportation itself which justifies different treatment, and it is for the general interest of the country that industries should be diffused rather than unduly concentrated.

To this end it is necessary that the interior miller should be permitted to do under transit in substance what the miller at the larger center can do under his reshipping rates. This I believe can be accomplished without discrimination and without injustice, and the decisions of this body recently made go far in that direction.

We have recently held in *Southwestern Millers' League v. A. T. & S. F. Ry. Co.*, 24 I. C. C., 552, that transit and nontransit articles may be sent from the milling point in the same car at the carload rate. This permits the interior miller to do precisely what the reshipping miller or dealer does.

We hold in this proceeding that the manufacturer of mixed feed may have the benefit of transit upon the transit portion and may pay the carload rate upon the nontransit portion, provided of course that an entire carload is shipped. This again is precisely what the manufacturer of the same article at a reshipping point can do.

In my opinion the same rule should be applied in the grinding of wheat. No distinction should be made in the out movement between the flour and the by-product. There should be an arbitrary reduction, as suggested in the opinion, from the weight of the wheat to take care of the loss in milling, but when that is provided for I do not think any question should be made as to whether the out movement is flour or offal. The miller should be permitted to ship his offal where

he will and his flour where he can best dispose of it at whatever transit rate he may be able to use from his in-billing.

This certainly does involve a possible substitution of tonnage, and so does all milling in transit and all elevation in transit which does not require that the identity of the grain shall be preserved.

It will not, in my judgment, result in harmful discrimination or in defeating the published rate. In actual result it is precisely what the miller at the reshipping point does, and his competitor at the interior point must have the same privilege if he is to continue to grind in competition.

This is a practical question which should be dealt with in a practical and not in a theoretical way. The rule as above stated has been universally observed in the past, and the milling industry has grown up under it. It ought not now to be changed, when the effect of the change must be to drive the small miller out of existence, unless there is some actual necessity for the change.

So far as I am informed, the serious discrimination in the past has been at these important markets like Chicago, St. Louis, etc., where the local consumption is large and where surplus billing was readily available. It has not been felt at the interior point. If now the difficulty at the great center can be taken care of, as I believe it should be, by the reshipping rate, then we may well allow at the small interior point a more liberal rule than would otherwise be possible.

Nos. 2804 and 2838.

ST. LOUIS BLAST FURNACE COMPANY

*v.*

VIRGINIAN RAILWAY COMPANY ET AL. ON REHEARING.

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No. 4245 (Sub-Nos. 2 and 4).

SAME

*v.*

SAME.

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No. 3825.

SAME

*v.*

VIRGINIAN RAILWAY COMPANY ET AL.

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No. 3825 (Sub-No. 1).

SAME

*v.*

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

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No. 4245.

SAME

*v.*

VIRGINIAN RAILWAY COMPANY ET AL.

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No. 4245 (Sub-No. 1).

SAME

*v.*

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

24 I C. C.



No. 4245 (Sub-No. 3).

SAME

v.

VIRGINIAN RAILWAY COMPANY ET AL.

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*Submitted April 12, 1912. Decided June 4, 1912.*

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1. Charges imposed upon complainant's shipments of coke from Page and Ansted, W. Va., and Glassport, Pa., to Carondelet, Mo., not found unjust or unreasonable *per se* or unduly discriminatory or to have subjected complainant to undue prejudice or disadvantage.
2. The rates collected on the shipments from Page to Carondelet that moved via New Albany, Ind., were in excess of the rate lawfully applicable thereto, and complainant is entitled to reparation in the amount of the difference as applied to such shipments.

*Harold R. Small and Stewart, Bryan & Williams* for complainant.  
*S. M. Adsit* for Virginian Railway Company.

*Alex P. Humphrey, Edward C. Kramer and C. B. Northrop* for Southern Railway Company.

*Henry G. Herbel and C. C. P. Rausch* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

*W. S. Bronson* for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

*O. E. Butterfield* for New York Central lines.

#### REPORT OF THE COMMISSION.

**MEYER, Commissioner:**

These cases have been consolidated by stipulation of the parties; for the purpose of this report, however, they naturally group themselves under three headings: Cases involving shipments to Carondelet, Mo., (a) from Page, W. Va., by way of New Albany, Ind., Nos. 2804 and 2838, and 4245 (Sub-Nos. 2 and 4); (b) from Page and Ansted, W. Va., by way of Cincinnati, Ohio, Nos. 3825, 3825 (Sub-No. 1), 4245, and 4245 (Sub-No. 3); and (c) from Glassport, Pa., by way of the New York Central lines, No. 4245 (Sub-No. 1).

All of the shipments were of coke in carloads intended for use in complainant's furnaces for smelting iron from the ores. These furnaces are located at Carondelet, Mo., a station on the lines of the St. Louis, Iron Mountain & Southern and Missouri Pacific companies, within the municipal limits of St. Louis, Mo. All of the expense bills for the shipments were paid by complainant at Carondelet, Mo., to the St. Louis, Iron Mountain & Southern Railway Company, or to the Missouri Pacific Railway Company, as the terminal or delivering carrier.

The complaints primarily demand reparation on past shipments and the substance of the allegations is that the rates imposed by the defendants for the transportation in question were unjust and unreasonable under section 1 of the act; that complainant was unjustly discriminated against by lower rates to Chicago and other places; and that such rates subjected the complainant and the city of St. Louis to undue prejudice and disadvantage as compared with blast furnaces located at Chicago and other lake ports where dual rates were maintained.

In each complaint the rate on coke to St. Louis is compared with the dual rates on the same commodity to Chicago and other lake ports, and because the carriers maintained at Chicago rates of \$2.65 per net ton on foundry coke and of \$2.35 on coke when for use in blast furnaces for smelting iron from the ores, the complainant says the rate imposed at St. Louis, where dual rates were never in force, was unjust, unreasonable, and subjected complainant and its locality to undue discrimination and prejudice. The petitions pray for the establishment of dual rates on coke at St. Louis, the lower rate to apply on coke for blast-furnace use, or "such rates on furnace coke \* \* \* as will put this complainant on an equal basis with \* \* \* its competitors," or "just rates \* \* \* on coke and on furnace coke to the city of St. Louis, Mo."

The complainant made some attempt at the hearings to amend its prayers by offering to eliminate from them the requests for the establishment at St. Louis of dual rates based upon the use made of the commodity. Bearing in mind our reports in prior cases we do not think it necessary to pass upon these offers to amend in view of the fact that a very large part of these records is based almost entirely upon the existence of two rates on coke at competitive points.

On June 19, 1911, the Commission issued a report and orders in Nos. 2804 and 2838, 21 I. C. C., 215. These orders were for reparation for unreasonable rates charged for the transportation of the shipments involved. The defendants did not obey the orders, but made them the subject of a petition to the Commerce Court. Subsequently such petition was dismissed and the defendants applied to the Commission for a rehearing, which was granted. It is upon this rehearing that the former record in Nos. 2804 and 2838 and the record Nos. 3825 and 4245, including all sub-numbers, have been finally consolidated and submitted. Taking the cases, therefore, as they now stand, we find that the complainants and the defendants are the same in Nos. 2804, 2838, and 4245 (Sub-Nos. 2 and 4), and that the subject matter of the complaints in all of the dockets just enumerated is the same, all the shipments embraced thereunder and here considered having moved over the lines of the Virginian



Railway Company from Page to Deepwater, W. Va., over the lines of the Chesapeake & Ohio Railway Company from Deepwater to Louisville, Ky., and over the lines of the Southern Railway Company from Louisville to East St. Louis, Ill., and over the lines and ferry of the St. Louis, Iron Mountain & Southern Railway Company, referred to hereafter as "the Ivory transfer route," from East St. Louis to the station known as Carondelet, Mo., within the city limits of St. Louis.

Our attention, therefore, is directed first to the rehearing of cases Nos. 2804 and 2838, as consolidated with the hearing in No. 4245 (Sub-Nos. 2 and 4).

The defendants attack our findings in the former report, 21 I. C. C., 215, their objections thereto and their petitions for rehearing being based upon allegations (a) that the Commission found the rate to be unreasonable when the issue was whether it was discriminatory, or subjected complainant to undue prejudice and disadvantage; (b) that, in substance, the defendants had not understood the reasonableness of the rate *per se* to be in issue, and not having defended its reasonableness there was no full or sufficient investigation of that matter by the Commission; (c) that one of the rates considered by the Commission, to wit, the proportional rate from New Albany, Ind., to Carondelet, Mo., upon which the Commission's findings were based, was by the defendants supposed to have been canceled, as it was their intention so to do, but that the Commission held this rate had not been canceled in fact or in law; and (d) that the Commission erred in awarding reparation based upon the unreasonableness of the through rate, for the reason that, not conceding the propriety of such award, if the Commission was of opinion that the amounts paid by complainant were excessive, because in the absence of a specific rate from point of origin to destination the lowest combination of rates applicable via the route over which the shipments moved was the lawful rate, then the Commission should have decided, not that the higher aggregate of intermediate rates was unreasonable, but that in collecting such higher aggregate there had been a straight overcharge.

The records now before us are complete, not only with respect to the reasonableness of the rates herein considered, but with particular reference to the facts in connection with the establishment and cancellation of the proportional rate of the Southern Railway Company from New Albany, Ind., to Carondelet, Mo.

The facts presented in connection with Nos. 2804 and 2838 should be restated. However, we do not think it necessary here to repeat what was said in our former report as to the substantial grounds which to our minds negatived, and still negative, the charges of unjust discrimination and undue prejudice. As to the rates and charges collected on all the shipments embraced in these cases, we now



have the clear issue presented by the defendants themselves: Were the rates and charges exacted for the shipments embraced in Nos. 2804, 2838, and 4245 (Sub-Nos. 2 and 4) just and reasonable?

In No. 2804, filed with the Commission August 2, 1909, the complainant brings in issue the charges imposed on 176 cars which moved from Page, W. Va., during the months of July and August, 1907. These cars contained 5,346 net tons of coke, upon which an aggregate charge of \$15,057.47 was collected, based upon a rate of \$2.80 per net ton plus a charge of 50 cents per car for weighing. The complainant claims that it was entitled to a lower rate because at other places the railroads had at that time two rates upon coke—one an open rate and the other a lower rate “when for use in blast furnaces for smelting iron from the ores”—and demands reparation in the sum of \$1,695.35, based upon a rate of \$2.483 per net ton, suggested to the complainant by applying to the rate collected the percentage of the aforesaid restricted rate to the open rate at Chicago. Seventeen of these cars were delivered to the complainant more than two years prior to the filing of this complaint, and following the *Blinn case*, 18 I. C. C., 430, it is clear that they are barred from consideration by the statute of limitations. There remain 159 cars of those enumerated in No. 2804, or a total of 4,801.85 net tons, delivered at destination within the two-year period, upon which complainant paid aggregate charges of \$13,535.31. All of these cars were billed from Page, W. Va., to New Albany, Ind. From New Albany to Carondelet, Mo., they moved on new billing, but the charges up to New Albany followed to ultimate destination.

In No. 2838, filed with the Commission September 10, 1909, the complainant brings in issue the charges imposed upon 1,185 cars which were received by it during September, October, November, and December, 1907, and June, July, September, October, November, and December, 1908, and January, 1909. They contained a total of 36,876.3 net tons of coke, upon which an aggregate charge of \$107,532.75 was collected, based upon a through rate of \$2.90 per net ton plus a charge of 50 cents per car for weighing. Complainant seeks reparation on basis of a rate of \$2.57 per net ton. Of these cars, 319 were billed from Page to New Albany. From New Albany to Carondelet they moved on new billing, the charges following to destination. The rest of the cars, 866 in all, moving after June 10, 1908, were billed through from Page to Carondelet.

In No. 4245 (Sub-No. 2), filed with the Commission July 22, 1911, the complainant brings in issue the charges imposed on 168 cars which were received by it during December, 1909, January, February, and March, 1910. These cars contained a total of 4,940.85 net tons, upon which an aggregate charge of \$14,329.15 was collected, based upon a rate of 10 cents per net ton from Page to Deepwater, W. Va., and a

joint rate of \$2.80 from Deepwater to Carondelet. Reparation is asked in the sum of \$3,309.80, based upon a rate of \$2.23 per net ton.

In No. 4245 (Sub-No. 4), filed with the Commission August 3, 1911, the complainant brings in issue the charges imposed on 154 cars which were received by it during August and September, 1908. These cars contained a total of 4,870 net tons, upon which an aggregate charge of \$14,687.11 was collected, based upon a rate of 10 cents per net ton from Page to Deepwater, and a joint rate of \$2.90 per net ton from Deepwater to Carondelet. Reparation is asked in the sum of \$3,750.67, based upon a rate of \$2.23 per net ton. While this complaint was not formally filed until over two years after the shipments were delivered, the record shows that the subject matter thereof was first presented to the Commission on August 11, 1910, and that such action brought the claims within the limitation period prescribed by the act.

In the rehearing of Nos. 2804 and 2838 our attention was directed to the statement in our former report that "the joint rates of \$2.90 per net ton and \$2.80 per net ton from Deepwater, W. Va., to St. Louis or Carondelet, Mo., were unreasonable in and to the extent that they exceeded the charges that would have been imposed had such joint rates not exceeded the aggregate of the intermediate rates between the same points, or \$2.60 per net ton." The objection appears to be that this rule was applied to shipments billed through from Page to Carondelet, and it is thought erroneous to have held that the higher joint rates from Deepwater, which the carriers had applied, were unreasonable instead of holding that in the absence of a specific rate from Page to Carondelet, or a specific manner of constructing the combination rate, the lowest combination of rates applicable via the route over which the shipments moved was the lawful rate and that, therefore, there had been a straight overcharge. This objection applies to 866 of the cars enumerated in No. 2838.

It is also contended with respect to all the shipments in No. 2804 and 319 shipments in No. 2838, all billed originally from Page to New Albany, and rebilled from that point to the complainant at Carondelet, that it was erroneous to apply the proportional rate from New Albany to Carondelet in the absence of a reconsignment privilege at New Albany. Confusion in the pleadings, records, and tariffs has resulted in errors which, it is hoped, have been corrected in what follows.

The testimony before us when we made our former report in Nos. 2804 and 2838 was to the effect that during the time covered by these shipments the rate from Page to Deepwater via the Virginian Railway was 10 cents per net ton, and the joint rate of the Chesapeake & Ohio Railway Company and Southern Railway Company from Deepwater to St. Louis was \$2.90 per net ton from July 1, 1907,



until September 1, 1908, and \$2.80 thereafter, and that these rates applied on shipments to Carondelet.

In our former report we called attention to the rate of \$1.50 per net ton from Deepwater to New Albany, published by the Chesapeake & Ohio Railway Company in connection with the Southern Railway Company, which rate is still maintained, and to the proportional rate of the Southern Railway from New Albany to Carondelet of \$1.10 per net ton. The combination of rates from Page to Carondelet which made the lowest aggregate consisted of the rate of 10 cents from Page to Deepwater, the rate of \$1.50 from Deepwater to New Albany, and the proportional rate of \$1.10 from New Albany to Carondelet, or \$2.70 per net ton for the through transportation from Page to Carondelet.

There can be no doubt regarding the rates from Page to Deepwater and from Deepwater to New Albany; but the existence after July 1, 1907, of the proportional rate of the Southern Railway from New Albany to Carondelet is contested by the defendants.

By supplement No. 2 to I. C. C. No. C-850, effective August 15, 1906, the Southern Railway, in connection with the Ivory transfer route, established from New Albany to Carondelet a proportional rate of \$1.10 per net ton on coke in carloads originating at points beyond. According to our records this rate was not canceled until April 10, 1910, when by supplement No. 3 the tariff was canceled, the notations thereon being: "No rates in effect" "(Issued to clear the record)."

The Commission, however, by special order No. 3, approved March 2, 1909, issued the following orders:

That on or before June 1, 1909, every joint freight tariff that is on file and that is not affirmatively concurred in by every carrier named as party thereto, under powers of attorney or concurrences, executed and filed in accordance with the Commission's regulations of May 1, 1907, and subsequent amendments thereto, shall be canceled, effective not later than June 1, 1909, unless on or before June 1, 1909, a supplement to such tariff specifying the carriers parties thereto and showing the concurrence form and number under which each such carrier is so a party thereto is filed with the Commission and made lawfully effective. If such supplement contains nothing but such list of participating carriers and their concurrences, it may be made effective on one day's notice by noting thereon authority of the Commission's order of March 2, 1909.

\* \* \* \* \*

That after June 1, 1909, the Commission will not recognize as lawful any tariff which does not show each and every carrier party thereto, other than the one or ones who file same, a participant therein under a lawful power of attorney or concurrence, executed and filed in conformity with the requirements of the Commission's regulations (Tariff Circulars 13-A, 14-A, and 15-A) or of this order.

This tariff of the Southern Railway, I. C. C. C-850, was neither reissued nor amended so as to comply with the foregoing rules and, therefore, we must hold that the use of such tariff after June 1, 1909, was unlawful.



The testimony before us indicates that the Ivory transfer route includes the Ivory ferry and all instrumentalities of approach and recession therefrom on either side of the Mississippi River, and that it is a part of the St. Louis, Iron Mountain & Southern Railway Company. This means that the Iron Mountain rails must be used east of the river between the Southern Railway yards in East St. Louis and the float or stage of the ferry below Dupo, Ill., and west of the river to reach Carondelet. The Southern Railway tariff, I. C. C. No. C-850, bears no note of having been issued in connection with the St. Louis, Iron Mountain & Southern Railway Company, but says, "In connection with Ivory transfer route" in supplement No. 2, and in the original tariff, "In connection with the Ivory Transfer Company." Shipments actually moved under this tariff, and the carriers interested in the transportation accepted their divisions of the earnings thereunder.

The explanation of the Southern Railway Company of this tariff and of the amounts charged the complainant after July 1, 1907, is substantially that it intended to cancel such tariff by "joint proportional tariff of the Southern Railway Company, I. C. C. No. C-1022," issued to become effective May 7, 1907, and proposed to advance the rate from New Albany to Carondelet to \$1.20 per net ton. By supplement No. 1 the rate from New Albany to Carondelet was to be canceled as of July 1, 1907, the intention having been to leave no rates in effect from New Albany to Carondelet or to St. Louis proper.

This tariff, however, was not filed with the Commission. The act to regulate commerce makes the rates provided in the tariffs on file with the Commission the only legal rates, and therefore the use of this tariff was not valid and the rates named therein were not lawful. It is the duty of the carrier to file the tariff and, having filed it, it is bound thereby until the same is canceled or superseded on the records of this Commission. The intentions of the carrier to make a change in the rate, unexecuted in the manner prescribed by law, can have no effect upon the lawfulness of the rate on file.

The defendants contend that Chesapeake & Ohio freight tariff I. C. C. No. 3771, by supplement 22, effective July 1, 1907, named the rate from Deepwater to St. Louis of \$2.90 per net ton, and that this rate applied to Carondelet until September 1, 1908. An examination of this tariff shows that it was restricted by its terms to apply to shipments via the Chesapeake & Ohio to Louisville, Ky., and the Southern Railway only from there to St. Louis *proper* at a rate of \$2.90 per net ton. It did not provide any rate to Carondelet. While Carondelet is within the municipal limits of St. Louis, the carriers name specific rates to it, and it can not be considered as included by the term "St. Louis proper." Carondelet can be reached over the rails of the Iron Mountain or Missouri Pacific railways, and this rate

was not applicable to such point. Effective September 30, 1908, by supplement 42, a rate of \$2.80 per net ton was established from Deepwater to Carondelet via Louisville, Southern Railway, East St. Louis, St. Louis, Iron Mountain & Southern Railway, and Ivory Transfer. This was the route over which the shipments moved, and this rate remained in effect until after such movement.

With respect to the 159 cars in No. 2804 and the 319 cars in No. 2838, which moved prior to June 1, 1909, that were originally consigned to New Albany and rebilled thence to Carondelet, the defendants contend that the transportation from Page to Carondelet not having been a through movement under through billing and there having been no reconsignment privilege available at New Albany, the proportional rate of \$1.10 could not and can not be applied.

It appears, however, that despite the absence of a reconsigning privilege at the time these cars moved, from July, 1907, to June, 1908, the defendant Southern Railway did reconsign the traffic and apply thereto the joint rate from Deepwater to Carondelet. There was never a joint rate from Page to Carondelet via route of movement. Our tariff files do not contain any joint rate via the Southern Railway and any of its connections from New Albany to Carondelet other than the proportional rate already mentioned. Indeed there was no rate, not even a class rate, via the Southern Railway from New Albany to East St. Louis upon which coke destined to Carondelet could move. Therefore the only rate which was established by the defendants as applicable to shipments of coke from New Albany to Carondelet was the proportional rate of \$1.10 per net ton before noted.

In the preceding statements we have set forth the rates in force on coke in carloads from Page, W. Va., to Carondelet, Mo., during the period of and via the route traveled by the shipments now under consideration. It is clear that the proportional rate of \$1.10 from New Albany to Carondelet was in effect from the movement of the first shipment in July, 1907, up to and including June 1, 1909, after which date, as before shown, its further use was unlawful. In the absence of a joint rate from Page to Carondelet, or a specific manner of constructing the combination between such points, the lowest aggregate of the intermediate rates was the lawful rate. This aggregate amounted to \$2.70 per net ton, made up of 10 cents from Page to Deepwater, \$1.50 from Deepwater to New Albany, and the afore-said proportional of \$1.10 from New Albany to Carondelet. After June 1, 1909, and until subsequent to the date of the last shipment, the lowest aggregate of intermediate rates amounted to \$2.90 per net ton, made up of 10 cents, Page to Deepwater, and \$2.80, Deepwater to Carondelet.

The complaints were brought upon the theory that the charges collected for the transportation from Page to Carondelet were unjust



and unreasonable under section 1; that they were unduly discriminatory under section 2; and that they subjected complainant to undue prejudice and disadvantage under section 3. We do not find that the charges were or are either unjust or unreasonable *per se*; or that they subjected or subject complainant to undue discrimination; or that the complainant was unduly prejudiced and subjected to undue disadvantage. But we are of the opinion, and so find, in view of all the circumstances and conditions existing in Nos. 2804, 2838, and 4245 (Sub-Nos. 2 and \*4), that the charges collected and received by the defendants for the services rendered in the transportation of coke from Page, W. Va., to the complainant at Carondelet, Mo., were greater than the lawful rates and charges which were specified in the tariffs filed and in effect at the time, because in the absence of a joint rate from Page to Carondelet they exceeded the combination of intermediate rates which existed at the same time and was applicable to the transportation, and that complainant is entitled to reparation in the difference between the charges exacted and the lawful charges. We further find that all the charges assessed upon these shipments were collected from the complainant at destination.

In No. 2804 the charges of \$13,535.31 collected and received of the complainant by the defendants for the transportation of 159 carloads of coke, weighing 4,801.85 net tons, from Page, W. Va., to Carondelet, Mo., during July and August, 1907, were greater than the rates and charges between the points named specified in the tariffs filed and in effect at the time; the legal charge was \$2.70 per net ton plus charge of 50 cents per car for weighing. Had these charges been applied, the total amount collected would have been \$13,044.50. It follows that the complainant is entitled to recover from the defendants \$490.81, with interest from September 1, 1907.

In No. 2838 the charges of \$107,532.75 collected and received of the complainant by the defendants for the transportation of 1,185 carloads of coke, weighing 36,876.3 net tons, from Page, W. Va., to Carondelet, Mo., between August 31, 1907, and February 1, 1909, were greater than the lawful rates and charges between the points named specified in the tariffs filed and in effect at the time, amounting to \$2.70 per net ton and a weighing charge of 50 cents per car. Had these charges been applied, the total amount collected from the complainant would have been \$100,158.50. It follows that the complainant is entitled to recover from the defendants \$7,374.25, with interest from February 1, 1909.

In No. 4245 (Sub-No. 4) the charges collected and received of the complainant by the defendants for the transportation of 154 carloads of coke weighing 4,870 net tons from Page, W. Va., to Carondelet, Mo., during August and September, 1908, were greater than the



lawful rates and charges between the points named, specified in the tariffs filed and in effect at the time, amounting to \$2.70 per net ton plus a charge of 50 cents per car for weighing. Had these charges been applied the total amount collected from the complainant would have been \$13,226. It follows that the complainant is entitled to recover from the defendants \$1,461.11, with interest from October 1, 1908.

The 168 cars involved in No. 4245 (Sub-No. 2) all moved in December, 1909, January, February, and March, 1910, during which period the rate lawfully applicable to such shipments was the combination of \$2.90 per net ton, composed of 10 cents Page to Deepwater, \$2.80 Deepwater to Carondelet. This was the rate actually imposed, and there being no overcharge the complainant, therefore, is not entitled to reparation on these cars. This complaint will be dismissed.

Orders will be issued in accordance with the findings herein.

The complainant asks that reasonable rates be fixed for the transportation of coke for the future. We did not prescribe any future rate in our prior report, nor are we inclined to do so on the present record. In other proceedings now pending rates on coke are under investigation. If whatever action the Commission may take in these proceedings requires a consideration of the rates involved in the instant cases, such matters will be attended to at the proper time. Our present findings are restricted to the overcharges exacted of the complainant and are based upon the grounds set forth. In taking this course we are not unmindful that defendants based their petition in the Commerce Court, in part, upon the ground that we have no authority to award reparation without fixing the rate for the future, saying:

The Commission did not, however, in either of said orders, or in its report, undertake to ascertain or fix a maximum reasonable rate to be observed in the future, nor did the Commission order any other or any new rate into effect, but simply awarded reparation to the complainant. Your petitioners allege that the said orders of reparation, without the establishment and prescription of a maximum rate to be observed in the future, are beyond the power of the Commission; that the Commission was without jurisdiction or authority to award reparation in this manner, and that the finding and prescription by the Commission of a reasonable maximum rate to be observed by all, the ordering in by the Commission of such a rate, and an order by the Commission prohibiting the use of a rate in excess thereof, are conditions precedent to an exercise of the powers of the Commission to order reparation.

Without commenting upon the reasoning upon which this objection was based, we desire to call attention to the fact that our awards of reparation are based upon the determination that the complainant is entitled to an award of damages, under the provisions of the act to regulate commerce, for violations thereof in the past, not for present violations thereof; and that this report and the present orders are based not upon the unreasonableness *per se* of the rates and charges

collected of complainant, but upon the exactions of rates and charges in excess of the rates and charges lawfully applicable to the shipments in question.

Directing our attention to the complaints involving shipments from Page and Ansted, W. Va., by way of Cincinnati, Ohio, to Carondelet, Mo., we find that the only essential differences between Nos. 3825, 3825 (Sub-No. 1), 4245, and 4245 (Sub-No. 3) are to be found in the intermediate carriers which engaged in the transportation beyond Cincinnati and in the delivering carriers beyond East St. Louis, Ill. All of the shipments from Page, W. Va., moved to Deepwater under a rate of 10 cents per net ton charged by the Virginian Railway Company, and from Deepwater or from Ansted to Carondelet, Mo., the rate collected was \$2.80 per net ton. These complaints allege unreasonableness, discrimination, and undue prejudice, the existence of dual rates at Chicago and other lake ports being set forth as a substantial ground for lower rates on furnace coke at St. Louis and Carondelet. Reparation is sought on all of the shipments to the basis of \$2.23 per net ton, which the complainant alleges would be a reasonable and nondiscriminative rate for the transportation in question.

No. 3825, filed January 28, 1911, brings in issue the charges collected on 608 carloads of coke which moved from Page to Carondelet between January and June, 1909, inclusive.

The complaint in No. 3825 (Sub-No. 1) was filed April 1, 1911, and assails the charges assessed upon 156 cars which moved from Ansted to Carondelet during March, April, May, and June, 1909.

No. 4245 was filed July 17, 1911, and brings in issue the charges collected by the defendants for the transportation of 598 carloads of coke which moved from Page to Carondelet from June to December, 1909, inclusive, and March to May, 1910, inclusive.

In No. 4245 (Sub-No. 3), filed July 22, 1911, the complainant seeks reparation on 26 carloads of coke shipped from Page to Carondelet during March, 1910.

No. 4245 (Sub-No. 1) was filed July 22, 1911, and involves the charges collected upon 297 carloads of coke which moved from Glassport, Pa., to Carondelet, Mo., in November, 1909, and in January, February, March, and April, 1910. On these cars the rate applied was \$2.65 per net ton.

So far as the record discloses the routing of the shipments involved in these five complaints was directed by the shipper. The rates collected were those lawfully applicable to the shipments and the evidence submitted does not convince us that such rates were unreasonable, unjustly discriminatory, or unduly prejudicial. These complaints will, therefore, be dismissed.

No. 3908.

BOARD OF TRADE OF MORRISTOWN, TENN., ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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FOURTH SECTION APPLICATION NO. 1548.

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*Submitted November 3, 1911. Decided June 4, 1912.*

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1. From the facts of record; *Held*, That Morristown, Tenn., and other points intermediate Bristol, Tenn.-Va., and Knoxville, Tenn., on the direct line of the Southern Railway, are entitled to rates from New York City and related points not higher than the rates contemporaneously in effect from these points to Knoxville; and *held further*, That the commodity rate on glassware, n. o. s., from Pittsburgh, Pa., and Wheeling, W. Va., to Morristown, should not exceed the combination on Bristol, Tenn.
2. The evidence before the Commission does not show the other rates assailed by the complainants to be unreasonable or otherwise in violation of the act to regulate commerce.

*G. M. Stephen and Dan McGuigan* for complainants.

*William A. Northcutt* for Louisville & Nashville Railroad Company.

*Maxwell & Ramsey and Joseph L. Lackner* for Pennsylvania lines.

*R. Walton Moore, M. P. Callaway, and Frank W. Gwathmey* for Atlantic Coast Line Railroad Company and certain other southeastern carriers.

*C. B. Northrop* for Southern Railway Company.

*William A. Eggers* for Baltimore & Ohio lines.

REPORT OF THE COMMISSION

MEYER, *Commissioner*:

This complaint, filed March 6, 1911, brings in issue the propriety of all the rates now published by the defendants to Morristown, Tenn., from all points on and east of the Mississippi River and on and north of the Ohio River and on and north of the lines of the Norfolk & Western Railway. The rates on the various classes and commodities from this territory are alleged to be in violation of the act to regulate commerce, because they are excessive and unreasonable, or subject the complainants, their traffic, and the locality of Morristown to undue



prejudice, or are higher for a shorter than for a longer distance over the same route in the same direction. Reparation is asked.

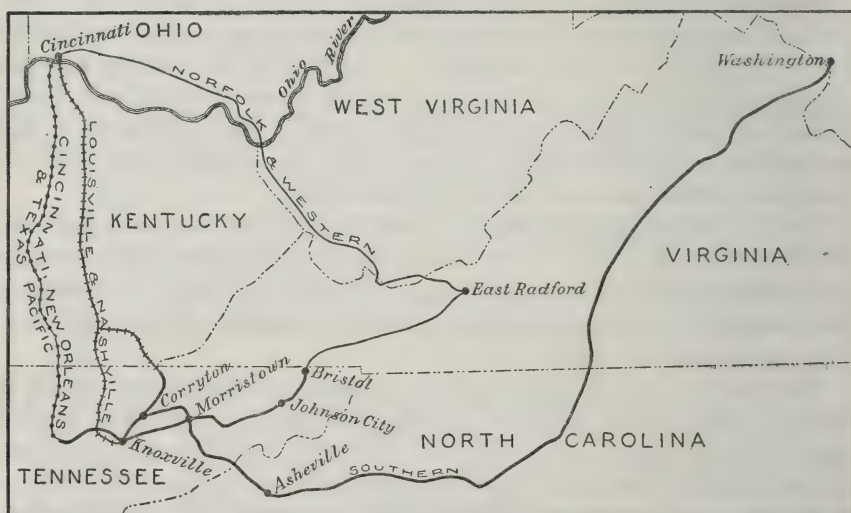
The complainants are the Board of Trade of Morristown, a voluntary association of merchants, and certain manufacturing and trading firms and corporations located at that place. The defendants include the more important of the carriers serving the territory described, by rail or by rail and water, and forming with their connections through routes to Morristown. A large number of the complainants are jobbers, and the case was tried as involving the rates into and out of Morristown, the complainants asking for rates in and out not higher than the rates in and out of Knoxville or Bristol, whichever combination should be lower. There is, however, comparatively little evidence regarding the outbound rates, the complainants directing their attention principally to the inbound rates and attacking the rate-making methods of the defendants in so far as they applied to Morristown from the territory described. Apparently Morristown has the same general application of rates outbound to nearby points as obtain from competing points in its neighborhood. The substance of the complaint is that Morristown is subjected to unreasonable rates on account of lower rates to Knoxville and Bristol.

Fourth Section Application No. 1548, filed by the Southern Railway on December 16, 1910, embraces the portion of this complaint brought under the fourth section of the act, and therefore it will be considered as a part of this proceeding so far as its applicability to the rate situation in question is concerned.

The accompanying map shows the location of Morristown, which is a local point on the Southern Railway, 89 miles southwest of Bristol and 42 miles east of Knoxville, on the direct line between these two points. From Morristown the Southern Railway also has a line extending southeastward through Paint Rock to Asheville, N. C., and another line running north and thence southwestward to Corryton, Tenn. Traffic from the east reaches Morristown via the Norfolk & Western Railway to Bristol and thence via the Southern Railway, or via the Southern Railway alone, through Asheville and Paint Rock, N. C. The movement from the east to Knoxville is through Morristown via either of these routes. From the west traffic reaches Knoxville via the Louisville & Nashville and Southern Railway and their connections, and is hauled from Knoxville via the Southern to Morristown and through Morristown to Bristol. It also moves from the west through Cincinnati to Bristol via the Norfolk & Western and thence to Morristown and Knoxville via the Southern. From Pittsburgh traffic moves either through Cincinnati and Knoxville to Morristown and Bristol, or through Cincinnati, Kenova, and Radford to Bristol via the Norfolk & Western and thence to Morristown and Knoxville via the Southern.

Thus, on traffic from the east via the two routes named, Morristown is intermediate to Knoxville, while it is intermediate to Bristol via one route and farther distant than Bristol via the other route. On traffic from the west Morristown is intermediate to Knoxville or Bristol or more distant than either point, dependent upon the route used, but with regard to the main volume of traffic it is beyond, rather than intermediate to, Knoxville.

The line from Knoxville to Bristol, now a part of the Southern Railway, was the old East Tennessee & Virginia Railway, and was opened between those points in 1859. Along the 131 miles of this track there are several jobbing centers, which compete not only with one another but with Knoxville, Bristol, and other large towns in that section of the country. These jobbing centers are Johnson



City, Jonesboro, Greeneville, and Morristown. Each of them has certain advantages, either of location or of rate adjustment, and there is a constant struggle between them for further individual superiority. The rates to Johnson City, and to some extent to related points, were considered by the Commission in the case of *Gump v. B. & O. R. R. Co.*, 14 I. C. C., 98. Following that report certain rates from the east to Morristown were advanced by the carriers in the effort to correct discriminations held to be unduly prejudicial to Johnson City.

In order to set forth clearly the real contentions of the complainants it will be sufficient to state the rates now in effect and those asked in their petition from New York, from Pittsburgh, and from Louisville and Cincinnati; the rates from the other points involved being adjusted with relation to these rates. They are given as effective January 1,

1912, for the first six classes as applied at Morristown and at points nearby. All of these rates as set forth in the following tables apply to shipments in carloads and less than carloads, as described in the classifications, with the single exception of the carload rates shown to Johnson City in Table I:

TABLE I.—*From New York City.*

To—	Class rates in cents per 100 pounds.					
	1	2	3	4	5	6
Bristol.....	91.5	78	60.5	42	37	28
Knoxville.....	100	85	70	55	48	40
Morristown.....	110	95	80	62	55	48
Morristown (rate asked).....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Johnson City, l. c. l.....	110	95	80	60	53	40
Johnson City, c. l.....	100	85	70	55	48	40
Asheville, N. C.: All rail.....	119	106	92	75	62	53
Rail and water.....	107	96	83	67	56	48

<sup>1</sup> Same as Knoxville.

TABLE II.—*From Pittsburgh, Pa.*

To—	Class rates in cents per 100 pounds.					
	1	2	3	4	5	6
Bristol.....	86.5	73	55.5	39	34	26
Knoxville.....	115	98	81	64	55	42
Morristown.....	125	108	89.5	69	59	45
Morristown <sup>1</sup> (rate asked).....	99	88	63	45	39	30
Johnson City.....	112.5	97	77.5	57	50	38
Asheville, N. C.....	130	113	97	78	64	53

<sup>1</sup> Governed by official classification.

TABLE III.—*From Cincinnati, Ohio, and from Louisville, Ky.*

To—	Class rates in cents per 100 pounds.					
	1	2	3	4	5	6
Bristol (a).....	74	60	45	34.5	29	23.5
Bristol (b).....	100	87	68	53	42	34
Knoxville.....	76	65	57	47	40	30
Morristown.....	99	88	77	65	55	44
Morristown (rate asked).....	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )	( <sup>1</sup> )
Johnson City.....	100	87	68	53	45	35.5
Asheville, N. C.....	99	88	77	65	55	46

<sup>1</sup> Same as Knoxville.

The rates to Bristol as shown in Tables I, II, and III (a) are those applied under the official classification; all other rates, including those shown to Bristol in Table No. III (b), are applied under the southern classification. The concurrent maintenance of rates under 24 I. C. C.



the two classifications at Bristol is accompanied by the tariff notation that the rates under the classification which makes the lower charge will apply.

The local rates between the various points named on the Southern Railway from Knoxville to Bristol were as follows:

TABLE IV.

From—	Class rates in cents per 100 pounds.					
	1	2	3	4	5	6
Knoxville to Bristol; from Bristol to Knoxville.....	50	43	39	32	26	20
Knoxville to Morristown.....	34	30	26	22	20	15
Bristol to Morristown.....	46	38	34	30	25	19
Knoxville to Johnson City.....	50	42	38	34	27	22
Bristol to Johnson City.....	26	24	22	18	16	12

It will be noted that from the east the complainants demand rates that shall not exceed those now applying to Knoxville. From Ohio River crossings, such as Louisville and Cincinnati, they also ask for the Knoxville adjustment. On traffic from the west and from central freight association territory they insist that they are entitled to rates constructed upon the local or proportional rates from points of origin to the Ohio River crossings plus proportional rates therefrom that shall be 80 per cent of the present rates. From the Buffalo-Pittsburgh territory they ask for rates constructed by taking the present rates from that territory to Bristol and adding thereto arbitraries for the haul beyond Bristol to Morristown made by taking the revenue per ton per mile up to Bristol from Pittsburgh and applying that to the 89-mile haul of the Southern Railway from Bristol to Morristown.

The history of the all-rail rates to Morristown and Knoxville (classes 1-6, inclusive) from New York and other eastern points related thereto shows that Morristown was voluntarily placed by the carriers on the same rate basis as Knoxville from January 25, 1889, to April 15, 1893, a period of over 4 years; that from April 15, 1893, to June 20, 1895, a period of over 2 years, Morristown was accorded rates considerably lower than Knoxville; and from June 20, 1895, to August 15, 1908, a period of over 13 years, Morristown was again on the same rate basis as Knoxville. Since August 15, 1908, the rates to Morristown have been higher than those to Knoxville, as shown in Table I, preceding. The rail-and-water rates from New York in force from 1890 to date show that from September 1 of that year to November 23, 1909, a period of over 19 years, the rates to Morristown and Knoxville were the same, while since November 23, 1909, the Morristown rates have exceeded those to Knoxville by 10 cents per 100

pounds on classes 1, 2, and 3, by 7 cents on classes 4 and 5, and by 8 cents on class 6.

The ordinary routes to both points are via Bristol or Asheville, thus making Morristown intermediate to Knoxville on traffic from the east. It is true that traffic may move from the east by way of other junctions, but the bulk of the movement has always been through Bristol and Asheville. The main current of traffic from eastern points to Knoxville being through Morristown, the adjustment of rates formerly in effect, whereby Morristown was accorded rates not higher than those applied at Knoxville, was not only amply justified by the movement but was in line with the spirit of the law. The defendants, in explanation of the change in the eastern rates to Morristown, urge the existence of competition at Knoxville which does not exist at Morristown and the effect of the complaint of the Johnson City merchants in the *Gump case, supra*. They also seem to fear that a readjustment of eastern rates to Morristown on the Knoxville basis would reflect back along the line of the Southern Railway through Asheville and up as far as Greensboro.

At the hearing on Fourth Section Application No. 1548, which includes the points situated between Bristol and Knoxville, this entire rate structure was carefully described. The Knoxville situation was analyzed possibly with greater care and detail than in the hearing of this complaint. That testimony shows that at present there are no water or other competitive influences at work at Knoxville which justify a higher charge to such intermediate points. The chief witness for the defendants regards the rates to Knoxville as abnormally low, but does not consider it practicable to raise them to what he considers a reasonable level. Assuming a reasonable rate at Knoxville, he sees no reason why Morristown, Johnson City, and the other intermediate points should be charged a higher rate than is charged at Knoxville. We take this testimony to apply especially to the direct line between eastern points and Knoxville via Bristol. Transportation via Asheville appears to be surrounded by somewhat different circumstances, and our conclusions in the present case and fourth section application apply only to transportation over the direct line via Bristol.

In the light of all the testimony in both of these proceedings we can find no possible justification for the violation of the fourth section at points intermediate Bristol and Knoxville. We think such points, which include Morristown, are entitled to rates from New York City and related points no higher than those applied on shipments to Knoxville. This adjustment should be made with respect to all classes and commodities and should be extended under the usual differentials, over or under the New York rate, to all points



in eastern or trunk line territory. As this is entirely a matter of discrimination, readjustments in these rates should be made with the least possible disturbance to the revenues of the carriers.

The complaint involves rates from, as well as to, Morristown, and although the testimony and exhibits refer almost exclusively to rates to Morristown, the adjustment above indicated will require changes in the rates from Morristown. Apparently the rates from Morristown to New York City and other eastern points are the same as the rates from those points to Morristown, and this relationship should be maintained.

While the evidence is conclusive that the complainants actually compete with jobbers at Knoxville, Bristol, and other distributing centers in their sales of articles moving under class and commodity rates from the territory in question to these points and delivered thence to the retailers or consumers in the states of Tennessee, Virginia, West Virginia, North Carolina, South Carolina, and Georgia, there is no evidence showing the rates from Morristown to the consuming points in such states to be unreasonable, and therefore no order can be made relative thereto.

With regard to complainants' prayer for rates from the Ohio River crossings to Morristown that are not higher than those from the same crossings to Knoxville, we find that the normal movement of traffic from those crossings is through Knoxville to Morristown, and there are no conditions affecting the traffic at Morristown which would entitle it to the same rates as apply at Knoxville.

As before stated, the complainants ask rates from the Buffalo-Pittsburgh territory which shall be equal to the Buffalo-Pittsburgh rates to Bristol plus arbitraries beyond based upon the ton-mile earnings from the Buffalo-Pittsburgh district to Bristol.

The rates from this district to Morristown now in effect are made not higher than similar rates to Bristol plus the local rates of the Southern Railway beyond. This gives the complainants the advantage of the lower scale of rates obtaining under the official classification to Bristol and does not discriminate against them. The evidence is not persuasive that such a change as the complainants request would be proper, and, therefore, we can not find that the present basis should be changed in the manner indicated.

It is alleged that some of the individual or commodity rates from this territory to Morristown are out of line and should be readjusted. The complainants say that rates on stoneware and the like from East Liverpool, Ohio, to Morristown exceed the combination of the rates to Bristol plus the local rate beyond. An examination of the tariffs does not sustain this contention, as the rate on stoneware from the point named to Bristol is 34 cents, and the rate from Bristol to Morris-



town is 12 cents, while the commodity rate from East Liverpool to Morristown is 45 cents.

The complainants allege that the present rate on glassware, n. o. s., from Pittsburgh, Pa., and from Wheeling, W. Va., 87 cents per 100 pounds, exceeds the rate on the same commodity to Bristol, 39 cents, plus the local rate of the Southern Railway from Bristol to Morristown, 34 cents. This contention is proven by the tariffs, and the defendants will be ordered to establish a rate on glassware, n. o. s., from Pittsburgh and Wheeling not exceeding the combination on Bristol.

It was also contended that the rate of 41½ cents on special iron from Pittsburgh and Wheeling to Morristown exceeds the combination on Bristol, but the tariffs show that the rate to Bristol is 26 cents and the rate beyond is 19 cents.

From central freight association territory, from St. Louis, and from other western points the complainants ask rates to Morristown made up of the local or proportional rates to the Ohio River crossings, plus proportional rates south thereof, which shall be 80 per cent of the present rates from such crossings to Knoxville. This request is unsupported by anything in the evidence before us, save argumentative reasoning. In the absence of joint through rates the present through rates are made by adding to the local or proportional rates from the points of origin to the Ohio River crossings the rates from such crossings to destinations. The rates from the crossings to basing points in the south, such as Knoxville, are now substantially proportional rates, established to apply on through business, and there is no basis for this request of the complainants.

Upon consideration of all the facts before us in these two proceedings our conclusions are, and we therefore find, that Morristown and other points intermediate Bristol and Knoxville on the direct line via Bristol are entitled to rates from New York City and other eastern points not in excess of rates contemporaneously in effect from such points to Knoxville, Tenn., and that the commodity rate on glassware, n. o. s., from Pittsburgh, Pa., and Wheeling, W. Va., to Morristown should not exceed the combination on Bristol.

No evidence with reference to reparation was offered and the request therefor is denied.

Orders will be issued in accordance with the conclusions expressed herein.

No. 4198.

IN THE MATTER OF EXPRESS RATES, PRACTICES,  
ACCOUNTS, AND REVENUES.

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No. 1280.

CALIFORNIA COMMERCIAL ASSOCIATION

*v.*

WELLS FARGO & COMPANY.

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No. 1911.

M. S. KOHLBERG & COMPANY

*v.*

WELLS FARGO & COMPANY.

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No. 1916.

CALIFORNIA COMMERCIAL ASSOCIATION

*v.*

WELLS FARGO & COMPANY.

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No. 2175.

BENGT E. SUNDBERG

*v.*

GREAT NORTHERN EXPRESS COMPANY ET AL.

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No. 2176.

SAME

*v.*

AMERICAN EXPRESS COMPANY ET AL.

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No. 2246.

SAME

*v.*

WELLS FARGO & COMPANY.

No. 4302.

## MEMPHIS FREIGHT BUREAU ET AL.

v.

## ADAMS EXPRESS COMPANY ET AL.

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*Submitted March 1, 1912. Decided June 8, 1912.*

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1. Express rates should be made primarily to meet the need of the great body of our people and should therefore be stated in terms that represent the small packages which the express company is intended to carry rather than by the 100 pounds, as freight rates are stated.
2. In the fixing of its rates an express company should not be allowed to charge more than a railroad company if the latter undertook to, and did, give the same service.
3. It is proper for the government to treat the express company as a freight forwarder by passenger train, giving supplemental service at each terminus and intermediate care.
4. An express rate may not be based upon the monopoly right of the express company to be the exclusive freight forwarder over one or more lines of railroad.
5. The rate should not include more than a reasonable compensation for the service given, even though such compensation falls below that which the railroad exacts as a minimum for the carriage of 100 pounds of freight.
6. It is unreasonable to fix as rapid a decline in express rates for long distances as is made by the railroads in their freight rates, express service in this respect being more analogous to passenger than to freight service.
7. In compounding the express rate the railroads should be allowed a compensation for bulked freight moved upon a passenger train as to which it is relieved by contract for all liability for loss or damage and is without expense for the furnishing of a receipt, the billing, the bookkeeping, and a great number of other general expenses.
8. The rate should include a return to the express company which will compensate it with profit for the expense of the service which it gives, there being added thereto in the formation of the total rate the proper charge which it may reasonably make for the service which the railroad gives, as stated in the preceding paragraph.
9. This Commission will require the following things of the express companies:
  - (a) A new and simple method of stating rates by which one who is not an expert in the reading of tariffs may know what rate he should be charged.
  - (b) The tariffs must present but one rate upon the same class of traffic between any two points in the United States served by the same carrier. The rebates by indirection concealed in the tariffs must be removed.
  - (c) There must be a new classification of traffic in which the standard or first-class rate shall be that on merchandise, and to which there shall be one great class of exceptions—a second class as it were—consisting of articles of food and drink now carried under the meaningless term of “general specials.” The rate for this latter class should bear a relation in percentage to the former. Our conclusion is that 75 per cent of merchandise would yield a fair and reasonable rate. Other rates may be made to meet traffic needs and develop industry, but all such rates shall be based on conditions of service and should, for convenience, likewise be stated in percentage of the merchandise scale.
  - (d) The rules of the express companies are too many and too involved. They need even more



drastic revision than is herein suggested. (e) The express carriers must unite in direct through routes, reaching all cities and towns accessible to each other by the shortest route measured in time. The Commission will leave this matter in the hands of the carriers for the present, but will undertake to see that this principle is recognized in the routing of express traffic. (f) There should be a precise statement published and filed showing the terminal service that is given at local stations. (g) To avoid prosecutions for illegal overcharges it is essential that double collections shall cease, and to this end a system of labels is herein prescribed—a yellow label, which shows that the charges have been paid; a white label, when the charges have not been paid; and if no label is carried on the package, it must be delivered without charges and the error later corrected. (h) The standard merchandise rates have been found to be discriminatory as between localities and unreasonable in themselves with respect to the points dealt with in our order. They have been the product of an unregulated growth, in which certain of the larger cities have gained an undue advantage and preference. A burden that is excessive and unjustifiable has rested upon the packages of smaller weight which the express carrier was especially created to transport. The railroad company in "farming out" this branch of its service upon a percentage contract basis has created an inevitable tendency to increase parcel rates. There has been no uniformity in the application of any system or basis or scale of rates with reference to points similarly situated even within the same territory, and no reasonable relation is suggested in the rates fixed between the service given by the railroad in the carriage of a parcel and that given by the express company in its terminal service.

10. In order that the shippers and the carriers may have abundant opportunity to analyze the rates and rules proposed herein and present their views to the Commission before they go into effect, the order herein will require the carriers to show cause on October 9, 1912, why the proposed rates should not be put into effect.

*Frank Lyon and W. A. Ryan* for Interstate Commerce Commission.

*John W. Griggs and Benjamin L. Fairchild* for Merchants' Association of New York City, Boston Chamber of Commerce, Chicago Association of Commerce, and others.

*Walker D. Hines* for American Express Company and others.

*T. B. Harrison, jr., and J. Zimmerman* for Adams Express Company and others.

*Carter, Ledyard & Milburn, J. H. Bradley, and J. W. Welsh* for American Express Company.

*William D. Guthrie* for Adams Express Company.

*George L. Shearer and J. D. Patterson* for Southern Express Company.

*W. W. Baldwin and P. S. Eustis* for Chicago, Burlington & Quincy Railroad Company.

*H. C. Barlow* for Chicago Association of Commerce.

*Perkins Baxter* for Traffic Bureau of Nashville, Tenn.

*Sherman E. Burroughs* for state of New Hampshire.

*B. D. Caldwell, F. S. Holbrook, and C. W. Stockton* for Wells Fargo & Company.

*W. H. Chandler and D. O. Ives* for Boston Chamber of Commerce.

*George Cosson* for state of Iowa.

*Charles D. Drayton* for Charles A. Stickney Company.

*R. S. French* for National League of Commission Merchants.

*J. W. Hicks* for Sears, Roebuck & Company.

*D. N. Lewis* for Iowa Railroad Commission.

*S. C. Mead* for Merchants' Association of New York City.

*William Savacool* for Chamber of Commerce of Manchester, N. H.

*William A. Wimbish* for Atlanta Freight Bureau.

*James Manahan* for complainant Sundberg.

*O'Brien, Boardman, Platt & Littleton* and *B. P. Kerfoot* for United States Express Company.

*J. D. Armstrong* for defendants in No. 2175.

*I. I. Brown* for complainants California Commercial Association and *M. S. Kohlberg & Company*.

*J. P. Loeb* and *E. G. Kuster* for Merchants & Manufacturers' Association of Los Angeles, Cal.

*K. B. Halstead, Robert Dunlap, T. J. Norton,* and *Gardiner Lathrop* for Atchison, Topeka & Santa Fe Railway Company.

*Seth Mann* for Pacific Coast Jobbers & Manufacturers' Association.

*T. K. Riddick* for Memphis Freight Bureau and others.

*Vogelsang & Brown* for *M. S. Kohlberg & Company*.

## REPORT OF THE COMMISSION.

### LANE, *Commissioner*:

The Commission has made an exhaustive investigation into the rates, rules, and practices of the express companies which were brought under our jurisdiction by the Hepburn Act of 1906. So numerous were the complaints made to us informally as well as formally of the unreasonableness of express practices and rates that we found it impracticable to deal with express conditions over the line of a single carrier or within narrow territorial limits. The criticisms and petitions upon which this inquiry was based made it obvious that conditions in one section and by one line were like to those obtaining in all other sections and over other lines. Therefore we have attempted to deal with this problem nationally.

The record in this matter has been so extensive as to forbid a review of the many questions involved and the character of the evidence introduced. It may be said in general, however, that we have given consideration to the financial affairs of these companies; the character of their organizations; the relationship which they enjoy with the railroads; the extent and nature of the property which they own; the character of their service; the basis of their rate systems; the cost of their operations; the manner in which their rates are stated; the relation of the service which they give to that extended by the railroads in the carriage of freight by freight



trains; the relationship between the rates established in different sections of the country for the same service by express; the similarities and dissimilarities obtaining as between the express service in the United States and similar service in foreign countries, together with a comparison of the rates in foreign countries with those extended in this country; and other questions analogous or related to these. Some of this data is matter of common knowledge; much of it relates to matters of internal economy; while very much, for reasons that are hereinafter given, casts no light upon the fundamental questions that are here involved. A suggestion may be gleaned of the character of this information from the appendix that is hereto attached.

#### MAGNITUDE OF OPERATIONS.

Thirteen express companies are named as parties to this investigation—the Adams, American, Wells Fargo & Company, United States, National, Southern, Great Northern, Northern, Western, Globe, Pacific, Canadian, and Canadian Northern. Of these the first ten are those of chief concern, as the Pacific has retired from business, and the Canadian and Canadian Northern have but slight operations in this country.

Last year, 1911, these ten carriers transported over 300,000,000 packages. They operate over 218,013 miles of steam railway in this country, and extend their service over 18,385 miles of steamship and stage lines and 6,665 miles of electric lines. They paid to these rail and other carriers \$69,730,895, and their own expenses, so far as these can be ascertained, arising out of their functions as express companies were \$64,305,590.

These figures suggest the importance of the express company as an institution. It is, moreover, an American invention. Nowhere else save on this continent does the express company as we know it exist. In other and smaller countries similar service is given by the railroads themselves; or the rail carrier, confining itself exclusively to transportation by rail, gives expedited service for small parcels, leaving the gathering and delivering of the packages to independent concerns generally known as forwarders. In the United States, however, the express company, which was originally created to care for the small-package business of an individual railroad line, has now become an invaluable agency in the articulation of the railroad systems of the country for the furnishing of fast passage for small freight. These carriers live by the grace of the railroads, and their existence may be justified only to the extent that their service is more efficient and more reasonable than that which would be given by the railroads themselves.



## ZONES OF INFLUENCE.

For many years the country was parceled out between these great companies into zones not unlike those zones of influence which characterize international politics in Asia at the present time. There was, for instance, an understanding that Wells Fargo & Company should not press into eastern territory—that is, that it should not extend its operations east of the Mississippi River—while the eastern companies should abandon the great west to that carrier. The New England states are, roughly, the territory to-day of the Adams and American. In the central states there is an active competition between the four large companies—Wells Fargo & Company, Adams, American, and the United States. The south from Washington to New Orleans is dominated by the Southern Express Company, but incursions into this field have been lately made on some trunk lines of railroad by the American and United States. The great northwest is supplied by the Great Northern, serving the Great Northern Railway, the Northern as the agency of the Northern Pacific, and Wells Fargo & Company for the Chicago, Milwaukee & Puget Sound. The Dominion Express Company of Canada has a branch in this country known as the Western, which operates over the Soo line. The Chicago, Burlington & Quincy is cared for by the Adams as far as Billings, Mont. The Union Pacific, which until recently was given express service by the Pacific Express Company, has lately entered into a contract with the American, which now does through business from the Atlantic to the Pacific. Wells Fargo & Company operate in the west over the Milwaukee & Puget Sound, the Santa Fe, and the Southern Pacific lines. The Globe Express Company operates over the Denver & Rio Grande and the Western Pacific. The southwest is competitive territory between all of the larger express companies excepting the Southern and the lines of the northwestern railroads.

While these companies are separate legal entities it is of interest to regard this fact, that by stock ownership and otherwise they are so interlaced, intertwined, and interlocked that it is with difficulty we can trace any one of the greater companies as either wholly independent in its management or the agency of a single railroad or system. The Adams and the Southern are closely affiliated (the name formerly was the Adams-Southern). The American Express Company is the second largest stockholder in Wells Fargo & Company. The largest stockholder in the United States Express Company is also the largest stockholder in Wells Fargo & Company. So that while these companies operate separately and compete with each other for traffic, the express business may be said to be almost a family affair. An interesting genealogical tree, in fact, might be drawn showing a common

ancestry in all of the larger companies. And while many names may be used to designate these companies, it is within the fact to say that aside from the operations of the minor and distinctively railroad express companies the express business of the United States is managed by not more than three groups of interests.

#### FINANCIAL AFFAIRS.

Since the Civil War, so far as our researches have extended, no express company in the United States has been forced into bankruptcy; and while express companies have risen and fallen in this period, the evidence tends to justify the conclusion that the death of an express company has always been the result of a change in policy by a railroad arising out of some new financial alliance.

We have sought to learn the actual amount of cash invested in these carriers and have been unsuccessful. We directly asked each of the carriers what the amount of cash was which is represented by its stock, and to this question received from these companies answers which are here epitomized:

*Adams Express Company.*—No statement is made as to the amount paid in when this company began business in 1854. The company was reorganized in 1866, at which time the number of shares was increased from 12,000 to 100,000. It is not shown that any money was paid for the additional shares, but it is stated that the assets of the company at the time of reorganization were \$3,686,526.55. In 1875, 20,000 additional shares were issued to shareholders without payment therefor by them. This company has also issued \$36,000,000 in collateral trust bonds as a distributive share of assets.

*American Express Company.*—This company gives no information concerning the amount of cash received in exchange for its stock at the original formation of the company, but states that the present American Express Company is a consolidation of the former American Express Company and the Merchants Union Express Company, the consolidation having been effected in 1868. At the date of said merger the present American Express Company received from the two constituent companies assets consisting of real estate, stock and bonds, cash in bank, and equipment, of the value of \$5,300,000, and also the business, good will, and existing contracts of the two constituent companies. The number of shares outstanding is 180,000.

*Great Northern Express Company.*—The Great Northern Express Company reports that in exchange for its capital stock of \$1,000,000 it received \$100,000 cash and extensions of contracts for 25 years with the Great Northern Railway Company, the Eastern Railway Company of Minnesota, and the Montana Central Railway Company. The express company agreed to pay the Great Northern Railway Company \$1,000,000 for such extensions of contracts, the payment consisting of \$100,000 in cash and \$900,000 in capital stock.

*The Globe Express Company.*—The above named company reports that in exchange for its outstanding capital stock of \$3,000,700 it received \$25,485.45 in cash, equipment valued at \$50,000, and the express business of the Denver & Rio Grande Railroad Company, together with the franchises pertaining thereto.

*National Express Company.*—The National Express Company reports that it received \$75,500 in cash, personal property (equipment) \$25,971.90, and good will and contracts to the amount of \$398,528.10, in exchange for its 5,000 shares.



*Northern Express Company.*—In exchange for its capital stock of \$5,000,000 the Northern Express Company received a contract between the Northern Pacific Railway Company and the Northern Pacific Express Company giving exclusive rights over the lines of the railway company and running 50 years, which was assigned to this company.

*Southern Express Company.*—The Southern Express Company states that none of the original shareholders of record are living and there is no existing record to show how much was realized from the distribution of shares. Although the number of shares was increased in 1866, and again in 1886, no evidence is presented that anything of value was received in exchange for them. There are now 50,000 shares issued and outstanding.

*United States Express Company.*—This company states that there are no records which show the detail of the issue of its stock prior to 1887. In August, 1887, 15,000 shares were given to the Baltimore & Ohio Railroad Company as part consideration for the Baltimore & Ohio Express purchased at that time, and 15,000 shares were sold for \$1,000,000. The number of shares issued and outstanding is 100,000.

*Wells Fargo & Company.*—This company states that owing to the destruction of old account books it is unable to state what cash was paid in prior to 1870, and no cash has been paid in since then excepting such as proceeded from its 300 per cent dividend of 1910.

*Western Express Company.*—The Western Express Company reports that its outstanding capital stock of \$50,000 was issued for cash and that \$50,000 was realized therefrom.

As we shall later see, these figures do not of themselves demonstrate the unreasonableness of existing rates or give foundation for a sound argument in favor of the abolition of this utility. Where the express company has been enabled to secure especially favorable contracts from the railroads by the internal pressure of the railroad's own directors or the external pressure of financial interests allied to the express companies, it manifestly was possible for the express company to make large profits without the imposition of exorbitant rates. Moreover, clearly an agency so extensive and doing so great a volume of business might well, throughout a half a century, accumulate large assets upon an extremely small return upon each unit of traffic.

A survey of the express situation in this country has brought us to the conclusion that there is but one proper view to take of the matter. The act to regulate commerce now imposes upon all of the railroad carriers the obligation to make through routes and to furnish proper facilities for the transportation of freight. This rule applies to parcels as to carloads. The act also by name recognizes the express company as a carrier subject to our jurisdiction. We must therefore regard these great forwarding companies as agencies created by the railroads and recognized by law for the conduct of a certain kind of freight business, to which these agencies have added a service that is distinctive and peculiarly their own. The traffic which they move should flow with the greatest possible celerity between all portions of our country, and whatever artificial barriers have been



raised by the existence of separate express companies should be broken down and the rates made or practices followed should neither rest upon the foundation of a railroad's preference nor of an express company's opportunity. Our sole concern, therefore, has been to discover in what regard the express companies as existing were delinquent in rendering the service which they purported to give, or which should be given under reasonable, just, and nondiscriminatory rates, and to discover what remedy could be applied under this law.

#### CAUSES OF COMPLAINT.

The Commission has found that the complaints made against the express companies might be grouped into the following classes:

- (1) Double collection of lawful charges.
- (2) Overcharges and undercharges effecting discrimination between shippers arising out of an obscure rate system and ineffective revision and supervision of accounts.
- (3) Indirect routing of shipments by the express carrier, resulting in unreasonable delays and defeating the reason for the existence of an express service as distinguished from ordinary freight service.
- (4) Failure or refusal to deliver parcels to consignees located outside of arbitrarily established free-delivery limits without notice being given either to the consignor or consignee as to the extent of free-delivery territory.
- (5) Unreasonableness of the terms of shipment imposed by the receipt given by the carrier.
- (6) Delays in the settlement of claims for loss and damage.
- (7) Excessive insurance charges when shipments are valued at more than \$50.
- (8) A confusing set of rules governing the classification of express matter which led to discrimination in rates between classes of shippers by providing obscure and insignificant conditions as the basis for classifications of which the initiated may take advantage to procure transportation at lower rates than are generally applied to the more uninformed portion of the public.
- (9) Delays in the return of c. o. d. collections to consignors.
- (10) The obscure statement of rates making the public dependent almost entirely upon the information furnished them by express agents.
- (11) The unreasonableness of the rates charged by the carriers.

All of the express companies have had a full hearing upon these matters of complaint, and have given throughout the inquiry expression to a consciousness on their own part of the necessity for a change in their practices and rules which will bring them into stricter conformity with the requirements of the act to regulate commerce and

will make their service more satisfactory to the public. And in this connection it is to be borne in mind that these carriers remained for 20 years entirely without regulation as to interstate traffic after the railroads had become subject to this act, and that various efforts to remedy existing conditions made by individual carriers had failed because of lack of harmonious action and the inability of the government to compel them to adopt practices that were just and nondiscriminatory. It is apparent that the evils complained of go to the very foundation of the express company, which is its relation to the railroad carrier which furnishes the transportation service. We have treated the express company as an agency of the railroad, furnishing passenger train movement of small packages of freight, extending its service to the door for the gathering of the package at the point of origin, giving special care to the shipment during transportation, and again extending its service by wagon to the door at point of destination.

We pass directly to a consideration of the questions which we have stated, pausing here only to say that we have found the evils so fundamental that it has been deemed necessary not only to criticize and correct existing rules and rates, but to build from the very bottom by outlining a national system of stating rates, a rational classification of express freight, and to enter into the minutiae of the billing, routing, and other details. As to some of these matters we have dealt with the carriers informally, and as to others designated committees composed of representatives of shippers and carriers have been called upon for suggestions as to the reasonable rule or practice.

### 1. DOUBLE COLLECTION OF LAWFUL CHARGES.

The express companies strenuously deny that such overcharges result from the pursuance of any policy recognized in the slightest degree by the companies themselves; but this investigation has made it clear that whatever the policy of the companies may have been in this regard their manner of doing business made such result almost inevitable, and the remarkable fact is that their machinery has not been so adapted as to cure this evil, especially in the face of the express provision of the law which makes it a penal offense for any carrier to charge, demand, collect, or receive a greater or less or different compensation for any service than that which is named in its tariffs. The complaints upon this score come from all sections of the country and are not confined to any one carrier.

It has been the practice of the express company to receive a prepaid package and stamp it as prepaid. Upon delivery, however, the carrier's wagon driver was given a book, which showed upon what packages collection should be made, and by this book he was

to be guided rather than by any marking upon the package. In many cases the package when prepaid was not marked as prepaid, and in other cases by the oversight of the agent at the point of delivery the wagon driver's delivery record did not state the fact of prepayment; and at many intermediate stages between the point of origin and the door of the consignee there was opportunity through slipshod methods of bookkeeping and checking for the record to misstate the fact. The most effective remedy which we can suggest for this practice is the establishment of a uniform system of billing and the adoption of a uniform rule regarding the delivery of packages. The rule should be that whenever a package is presented to a consignee which does not bear a label it shall be delivered without charges to the consignee. This rule should be based upon another, which is that to every package should be attached at the point of origin by the driver or receiving clerk one of the following labels:

24 I. C. C.



When the charges have been prepaid the label is to be on yellow paper and is to read as follows:

----- Express Company			
No. -----	From -----	----- <small>[Insert point of origin.]</small>	
Dept. No. -----	Tally No. -----	Route No. -----	
Express Charges on this shipment are		<b>PREPAID</b>	
-----			
<small>If express charges appear as collect on delivery sheet, deliver free, entering all numbers shown hereon and on the waybill label, oppo- site the entry on delivery sheet.</small>			
Value	Weight	Charges	
\$		\$	on Pieces



When the charges are to be collected the label is to be on white paper and is to read as follows:

----- Express Company		
No. ....	From -----	[Insert point of origin.]
Dept. No. ....	Tally No. ....	Route No. ....
<b>COLLECT</b>		
charges at destination		
on ----- pieces.		





This waybill, attached either as a stamp or as a tag to the package in the case of a prepaid package, is to be printed on yellow paper and read as follows:

Express Co. <b>PREPAID FREIGHT W. B.</b>			Express Co. FROM <b>PREPAID</b> CLERK No. ....	
(1) Messengers and	(2) transfer points with	(3) connecting companies	No.	DATE
			[Insert point of origin.]	
			To _____ State _____	
Consignee _____				
Destination or Local Address _____				
ARTICLE		WEIGHT	SHIPPER	
			ROUTING VIA	
			EXPRESS CHARGES	PREPAID
			TO WHOM PAID	PREPAID BEYOND
RATE		VALUE		
\$		\$		

(4) will stamp in	(5) these spaces in	(6) consecutive order,
and when these spaces are	all occupied, messengers	will stamp on the back.
NOTATION		RATE AND REV. VERIFIED BY
		REC. OFFICE
		DELIVERY RECORD

**This Waybill Label must be affixed to all Prepaid Shipments, and where not possible to paste on the shipment itself, attach a Special Tag (Form \_\_\_\_\_), and paste this label thereon.**

### REDUCED FACSIMILE OF PROPOSED WAYBILL.

The above is a reduced facsimile of the proposed new combined Waybill and Label for express shipments. The waybill is to be not over 3½ inches wide and 9½ inches in length. The label which is attached is to be not over 3½ inches wide and 5 inches in length.

Express Co.  
FROM

**PREPAID**

CLERK No. ....

No.

DATE

[Insert point of origin.]

To

State

Consignee

Destination or Local Address

ARTICLE

WEIGHT

SHIPPER

ROUTING VIA

EXPRESS  
CHARGES

**PREPAID**

TO WHOM PAID

RATE

VALUE

\$

\$

If this shipment arrives without a regular waybill, Agent will make a substitute copy of the original waybill from information given hereon, and deliver shipment to consignee, or transfer to connecting company with substitute waybill.



Where the package is sent collect the waybill is to be on white paper and read as follows:

Express Co. <b>COLLECT FREIGHT W. B.</b>			Express Co. FROM		CLERK NO. ....	
(1) Messengers and	(2) transfer points with	(3) connecting companies	[Insert point of origin.]	No.	DATE	
			To _____ State _____			
			Consignee _____			
			Destination or Local Address _____			
(4) will stamp in		(5) these spaces in	(6) consecutive order,			
and when these spaces are		all occupied, messengers	will stamp on the back.			
NOTATION		RATE AND REV. VERIFIED BY				
		REC. OFFICE				
		DELIVERY RECORD				

ARTICLE	WEIGHT	SHIPPER					
ROUTING VIA							
		ADVANCES TO COLLECT	EXP. CHARGES TO COLLECT	TOTAL COLLECT	PAID IN PART		

RATE	VALUE
\$	\$

**This Waybill Label must be affixed to all Collect Shipments, and where not possible to paste on the shipment itself, attach a Special Tag (Form .....), and paste this label thereon.**

### REDUCED FACSIMILE OF PROPOSED WAYBILL.

The above is a reduced facsimile of the proposed new combined Waybill and Label for express shipments. The waybill is to be not over 3½ inches wide and 9½ inches in length. The label which is attached is to be not over 3½ inches wide and 5 inches in length.

Express Co.  
FROM

CLERK No. ....

No.

DATE

[Insert point of origin.]

To

State

Consignee

Destination or Local Address

ARTICLE

WEIGHT

SHIPPER

ROUTING VIA

ADVANCES  
TO COLLECT

EXP. CHARGES  
TO COLLECT

TOTAL COLLECT

PAID IN PART

RATE

VALUE

\$

\$

If this shipment arrives without a regular waybill, Agent will make a substitute copy of the original waybill from information given hereon, and deliver shipment to consignee, or transfer to connecting company with substitute waybill.

This gives to the express agent at the forwarding office a record showing whether the package has been prepaid or not. He in turn is to attach to the package a copy of a waybill printed on the same colored paper as the label originally attached to the package at the door of the consignor.

The express company is to make out these waybills in triplicate, one being attached to the package, one being reserved by the office of the carrier at point of origin, and one being forwarded to the point of destination, so that a check at destination can be kept by the carrier's agent upon each package. When, therefore, a package bearing a yellow label arrives to a consignee, it shows that such package has been prepaid. Where it bears a white label it shows that it has been sent collect. If it bears no label the burden is upon the express company to deliver the package, and if upon examination of its records it finds that through its mistake or otherwise the delivered package has not been prepaid it must look in the first instance to the consignee for payment of the lawful charges.

## 2. OVERCHARGES AND UNDERCHARGES.

In the aggregate, the amount of charges collected in excess of legal rates from some shippers has been large. It is equally true, however, that these overcollections have in the greater part been counterbalanced by failure to collect full legal rates from others. The assessment and collection of greater than legal charges and the failure to collect the full legal charge appears to have resulted chiefly from the system of rates which was obscure and open to misconstruction and misinterpretation, and while there may have been no intention to discriminate the effect was the same. With at least one of the express companies it appears to have been the practice to offset the overcharges against the undercharges when discovered; for the individual amounts involved were usually so small as (in the mind of the express manager) not to justify the expense of making the necessary refunds and collections in order to comply with legal requirements.

The prime requisite for the elimination of these overcharges and undercharges is a simplified system of rates. A new scheme of rate making must take the place of the present complicated rate structure. A system of through rates must be substituted for the present plan of making rates by way of transfer points, a scheme whereby it will be possible for the agent at the point of origin to obtain the proper through charges by reference to a simple schedule which will give the same rate from point of origin to destination, no matter by what route the shipment may travel and without reference to the number of carriers that may participate in the haul. As a preliminary to the adoption of such a system, it should be required of the carriers that



they jointly establish and publish through rates between all points reached by the lines of the various companies. The performance of this task appears to be made possible only by the adoption of a system of blocks and zones, such as is hereinafter described.

As present express tariffs are constituted, the seeker for a through rate between points widely removed must first find the local rates applying between the point of origin and the many transfer points by which the shipment may possibly move before he can determine which combination will produce the lowest through rate. It is manifest, therefore, that the opportunity for error in the assessment of rates is multiplied by the number of possible combinations that may be made. In many instances from 5 to 15 different combinations may be found, and the shipper, even though an expert, can never be certain that he has found the lowest combination. With the plan hereinafter suggested there can be only one rate between two points, and thus by the elimination of combinations of locals the opportunity for error is reduced to a minimum.

As a further precaution against erroneous charges the rule should be that the agent at the receiving station shall in every instance revise the charges upon receipt of the waybill before making collections on collect shipments and that the agent at point of origin shall cause all prepaid waybills to be revised as to weights and charges, and refund of overcharges be made within 24 hours in event of overcollections having been erroneously made. This system of revision of waybills is one which, with a proper internal organization and a simplified rate system, will entail little, if any, additional expense upon the express companies, as has been proved by their efforts at revision since their attention has been called to the defects in the present system. It is admitted by the express companies that revision of their business within 24 hours may be done at a minimum of expense, and for the more effective provision of such a system it is recommended to these carriers that they shall organize a clearing-house association, or association of accounting officers, for the purpose of devising a proper system to carry out these requirements.

### 3. CIRCUITOUS ROUTING OF SHIPMENTS.

Expedition is the very soul of the express business. We find however, that it has been the custom of the express carriers, when shipments have been intrusted to them for delivery at points not on the lines of railroad over which they operate, to retain possession of the shipment so as to receive the longest possible haul via their own lines. The result has followed that many shipments have been carried by roundabout routes before being delivered to the final carrier. In many cases this delay has been accompanied by the assessment of excessive charges based upon the long routing instead of the route

over which the shipment should have traveled. It does not appear that the making of the indirect route the basis of the charge has been a systematic or intentional misapplication of the tariffs, but rather that it is the very natural misapplication thereof by the agent at the point of origin, who, in routing the business, has been following the instructions of his superiors and who, from lack of time or from lack of interest in the matter, is satisfied to assess the rate via the route which the shipment travels rather than to trace out the most direct route and apply the charge which should have been applied under the tariffs.

For the cure of this most annoying, and one of the most frequent, causes of complaint against the express companies, they should be required forthwith to establish and jointly publish through routes between the principal points in the United States, which routes shall follow the main lines of travel, the most direct in point of time measured by the schedule of those passenger trains by which normal schedules are observed. These joint through routes should be known and designated by number and should be filed with the Interstate Commerce Commission. The tariffs in which these through routes are named should as a matter of information state the usual time occupied in the transportation of express traffic between the termini of these routes, but this should not be construed as a guaranty of delivery within that time. The naming of these through routes should be binding upon the carriers as to the rates that are to be applied and should constitute an index to the shipper of the probable time to be consumed between the point of origin and destination. The carriers should be required to add to such through routes as rapidly as possible and to change them as often as may be necessary for the better accommodation of the traffic.

The publication in which these through routes are named should contain a description of such through routes, to consist of—

(1) The names of the termini and the number of the route, as, for instance, "New York to New Orleans; through route No. —."

(2) The gateways via which such carriers operate between points of origin and destination, as, for instance, "New York—New Orleans, Adams Express Company via Washington, D. C.; Southern Express Company via Atlanta."

(3) The names in alphabetical order of all the principal stations on the through routes so established.

(4) An alphabetical index of stations, showing the route number or numbers by which each may be reached.

The consignor shall have the right to designate in writing the joint through route thus established and published, by which the specific shipment shall move; provided, however, that in an emergency the originating or any intermediate express company shall have the right,



in the interest of expedition, to send the shipment by some other route than the one designated by the shipper, if delivery is not delayed by such action or the rate increased. The express companies have undertaken to establish a joint routing committee for the purpose of immediately putting into effect this method of stating routes, and to continue such joint routing committee for the purpose of extending wherever necessary and as rapidly as practicable such method between all points.

#### 4. FREE-DELIVERY LIMITS.

Another fruitful source of dissatisfaction with express carriers has been their neglect or refusal to deliver shipments outside of arbitrarily established free-delivery limits, of which the shipper has had no previous notice or information. In many instances these delivery limits are not named in any publication of the carrier, and appear to be entirely within the control of the whim or inclination of the local agent. The popular conception of express service is that it includes the free delivery of the package at the consignee's address. This conception has been fostered and encouraged by the express companies themselves, so that when a consignee is required either to call for his package or submit to an extra charge for its delivery, complaint and dissatisfaction follow. Therefore, it will be ordered that the express carriers publish a joint general directory, alphabetically arranged by cities, of all express offices in the United States, the name of each office to be followed by a statement as to whether a free-delivery service is maintained at such office or not. Where a free-delivery service is maintained, unless the publication shall circumscribe the delivery limits (as hereinafter illustrated), it shall be understood that the delivery service comprehends the corporate limits of the place named.

At each of such offices where restricted free-delivery limits have been established, the boundaries of the free-delivery zones should be shown in a condensed and abbreviated form sufficient to give notice to the shipper and consignee of the outline of the limits thereof, by streets, as for instance:

San Diego, Cal.—Bay ave., from the beach east to 32d st.; north on 32d st. to Horton ave.; west on Horton ave. to City park; north on Arizona ave. from City park to Adams ave.; west on Adams ave. to city line; west on city line to Ingals st.; south on Ingals st. to Vine st.; west on Vine st. to the beach.

At each point where delivery is made by local express companies beyond the established delivery limits a footnote should be shown reading as follows:

NOTE.—Shipments delivered by local express companies to points outside of the defined delivery limits as shown herein will be subject to the additional charge of such local express companies.



The charge for this service is usually -- cents per package, but the company does not guarantee delivery at this rate, which is subject to change without notice. Prepayment of such charges may be made by consignor at point of origin, subject to the collection from consignee of any deficiency in the amount so prepaid.

This directory should be filed with the Commission and conform to the express tariff regulations of the Commission, subject to such modifications as the Commission may find necessary or desirable, and copies should be posted at all express offices in the United States. Copies of this and all similar publications suggested herein should be furnished to all shippers upon payment of a reasonable charge therefor, which charge should not exceed the actual cost of printing such extra copies as may be required to meet the demands of shippers. The carriers have expressed themselves as agreeable to the course herein outlined as to all of the matters heretofore dealt with.

#### 5. UNREASONABLE LIMITATIONS IN RECEIPT.

The law requires that the carrier shall give a receipt for the package it receives. The receipt now given is not satisfactory, chiefly because of the conditions thereto attached. These conditions, it is said, have been so craftily worded as to improperly limit the rights of the shippers thereunder and to discourage the presentation of claims by shippers whose consignments have been lost or damaged in transit.

The rates of the express carriers have heretofore been based upon a limitation of value of \$50 per shipment, and the receipts given by the express carrier have contained a provision which limited recovery in case of loss to this amount. The validity of this provision has been challenged and has been the subject of judicial interpretation with the result that various constructions have been given to the receipt, which has been upheld in some courts and not sustained in others, and is now before the Supreme Court for final adjudication. The representatives of some shippers have urged the elimination of this limitation as the basis of express rates, whereas other shippers have contended for the retention of this limitation of value, and for the abolition of the arbitrary charge which the carrier has heretofore assessed upon shipments valued in excess of \$50, contending for their right to independently insure values in excess of \$50, wherever such insurance could be procured most cheaply. Associations are maintained in various commercial centers for the insurance of express shipments, and these insurers have usually made a lower charge for the risk than that imposed by the carriers' tariffs. It was argued on behalf of the carrier that the increased charge for shipments valued in excess of \$50 was made necessary, not only by extra risk in case of loss, but by the necessity for greater care in the handling.

In all the parcel-post systems that we have examined the low rates of carriage have been invariably accompanied by correspondingly low

limitations of value, and while numerous complaints have been made during the course of this investigation, based upon the carrier's declaration to pay losses in excess of \$50 (in the absence of a greater declared value and payment of the extra charges based thereon), it does not appear to be wise to establish a small parcel rate based upon unlimited values.

We have therefore deemed it prudent and for the best interest of the shipper, for the time being at least, to permit the \$50 valuation clause to remain in the receipt. This liability, however, with respect to shipments in excess of 100 pounds, should be increased in ratio to the increase of weight. The Commission and a committee representing shippers and carriers is engaged upon the consideration of a proposed express receipt which it is hoped may be adopted by all companies.

#### 6. DELAYS IN THE SETTLEMENT OF CLAIMS FOR LOSS AND DAMAGE.

Thousands of complaints have been received by the Commission during the progress of this investigation of apparently unnecessary and indefensible delays in the settlement of claims for losses resulting from the alleged negligence of the carriers. The Commission's examiners, who made an exhaustive review of the claim bureaus of two of these carriers, reported a condition existing therein which indicated a policy of delay in the investigation and settlement of claims of which the management of the express companies appeared to be unaware. It has been the policy of one of these carriers at least never to conduct any of the negotiations for the settlement of claims by correspondence, never to commit the company in writing to any policy with respect to the disposition of claims, but to rely upon personal visitation of the special agents of the company to the claimant for the proper disposal of such claims. The result of this policy has been to develop antagonism on the part of the shippers, who view this policy as one intended to discourage the prosecution of claims. It has been freely asserted that the express companies will seldom settle with claimants until threatened with legal proceedings. We have been assured by the management of the carriers represented in these proceedings of their earnest desire to reform these claim bureaus in such manner as to give prompt handling and disposition to all claims. It is our view that the rule should be that, in the event of the nondelivery or loss or destruction of a shipment, a notice shall immediately be mailed by the agent of the carrier at destination to both the consignor and consignee, if known; and in the event of claim made in writing the company shall immediately acknowledge its receipt and shall, within six months from the date of filing such claim, notify the claimant in writing of the disposition made thereof.



Claims for partial loss or damage should be given equally prompt disposition.

To the establishment of these rules of practice shippers and carriers have given their approval.

#### 7. EXCESSIVE INSURANCE CHARGES ON SHIPMENTS VALUED IN EXCESS OF \$50.

It is claimed on behalf of shippers that the charges which the carriers have heretofore assessed on values declared in excess of \$50 are excessive. For each \$100 or fraction thereof in excess of \$50 the charge has heretofore been 10 cents when the through merchandise rate was \$3 or less, 15 cents when the merchandise rate was more than \$3 and less than \$8, and 20 cents when the merchandise rate was over \$8.

The insurance charges almost universally prevailing on shipments conveyed by parcel post or other parcel-carrying systems in other countries are substantially one-tenth of 1 per cent—that is to say, 10 cents for each \$100 or fraction thereof. This also is a customary rate with private insurers. Therefore it would seem to be a reasonable rule that the charges of express carriers in the United States based upon valuation in excess of \$50 should not exceed this general standard, and that hereafter the valuation charge shall be 10 cents for each \$100 or fraction thereof in excess of \$50, and this irrespective of the rate of carriage.

#### 8. CLASSIFICATION OF EXPRESS MATTER.

Seventeen operating express carriers of the United States and Canada jointly publish or concur in what is known as the "official express classification."

The official express classification is a publication primarily designed to separate into several classes the various articles ordinarily offered for transportation by express. The purpose of such a separation is ostensibly to afford lower rates to those articles of commerce that by their nature would not move if the merchandise rates established by these carriers were assessed, and to secure higher rates on such property as may by reason of great bulk, fragility, or value require distinctive facilities or more than ordinary care or entail more than ordinary risk.

Originally there were but two classes of express rates, merchandise and special. The carriers offered transport to letters as well as to merchandise. Rates were unstable, fluctuating, and elastic. They had no foundation other than the ability or willingness of the shipper to pay. The Post Office Department by legal action compelled the express companies to abandon the handling of letters. The carriers then sought by competition to win away from the government the



most profitable of the parcels business by putting in rates of which the initiated could take advantage, that were as low as and sometimes lower than those of the post.

Competition between the express carriers led each to erect certain classes of special rates of which the large shippers were apprised and of which favored mail-order concerns were given the advantage. Rebates were given as in freight transportation, and a struggle was begun for control of the business of heavy shippers. Then came a period of "cooperation," and the special rates and classes that had been intended originally for the advantage of one or the other carrier became the established classes for all. The joint publication ensued, in which the general rates and charges of all companies were published and the special rates became "general specials"; but each carrier continued to publish special rates of its own, either as exceptions to the classification or as commodity rates.

It is with this official classification, the outgrowth of these conditions, that we have to deal. Broadly, it separates all kinds of movable property into two general classes, "merchandise" and "general special," the latter indicating a former special rate that has now become general. More specifically it creates a variety of classes and rates (designated as Sections A, D, and E, and the scales accompanying J, K, L, M, N, O, and Z), and provides a number of open, yet obscure, avenues by which the initiated may secure lower rates than the uninitiated.

The express service bears a very intimate personal relation to the needs of every householder. The citizen who seldom or never ships by freight is a frequent patron of the express. He knows nothing of classifications or of rates, but he is keenly alive to discriminations and to unfair treatment. So that when he learns from a merchant whom he patronizes that it will be to his advantage to let the merchant pay the express charges, and when he finds that the parcel is carried for less than he can secure its transportation, he does not know that an obscure provision of a cryptic classification makes this possible; he only knows that he is somehow discriminated against. In the development of large commercial enterprises the traffic managers who control a heavy tonnage have a keen eye to the framing of such documents. They are almost always present when they are constructed or revised, each intent upon securing some provision that will work to the advantage of his particular line. But the ordinary citizen knows nothing of the nature or necessity of the classification. So there gradually creep into such documents provisions favorable to this or that interest which, standing undisputed and unnoticed, in time come to be considered as vested rights, and which are defended with all the vigor and earnestness of virtue assailed.

## SPECIAL WHISKY PREPAID RATE.

Of this latter character are the provisions governing the shipment of "liquor, n. o. s.," which does not include wine, or liquid medicines, nor drugs, nor alcohol, nor liquid chemicals. If the charges on a shipment of whisky are prepaid it may be shipped for less than if shipped collect. The mail-order house that advertises to ship whisky charges prepaid knows this, but the ordinary man does not. There are, therefore, two rates on the same commodity—one for the shipper who prepays the charge and a higher one for the consumer who pays the charge on delivery.

As we said in *Boise Commercial Club v. Adams Express Co.*, 17 I. C. C., 121:

It is fundamental that there can be but one lawful rate between two points, and the law takes no cognizance whatever of the distinction made by the express companies between prepaid and collect shipments. It is a carrier's right as a public-service corporation to demand prepayment on all shipments, and it may not distinguish between persons who pay in advance and those who do not. The carrier may waive its right to demand prepayment and accept a shipment with the understanding that it will collect the charges upon delivery to consignee; but if it does not collect such charges from the consignee it must look to the consignor for payment. The collection of the lawful rate is a duty imposed on the carrier by law, and it is given a lien upon the property transported to enforce the payment of charges. To accept a shipment without prepayment is no more than to extend credit to the consignor, and this within reasonable and nondiscriminatory limits it may do. But neither a railroad, an express company, nor other public carrier may lawfully make rates based upon the waiver of its rights to collect charges at the time it receives a shipment; for if there is any risk in the carrying of the shipment without payment of charges the carrier must in fulfillment of its own duty under the law resolve that risk against the consignor and collect in advance. Rates may not be based on a temporary waiver of a carrier's right, nor may the reasonableness of a rate turn upon the assumption that some will pay the lawful charges and others will not, so long as the law gives the right to collect the rate in advance and demands that the carrier shall without fail collect its published charges.

## SECTION-E RATES.

Another concealed lower rate lies in the provisions of the so-called "section-E" rates of the official classification—not concealed from the habitual shipper, but generally unknown to the ordinary citizen. As published in earlier classifications and rate books, this rate bore a cautionary note to the agent who was advised that it was a rate intended only for large shippers, manufacturers, and the like. By its provisions any package of merchandise upon which a shipper will inscribe "value not exceeding \$10;" who will not seal his parcel, and who will prepay the charges, may have it carried to any express office in the United States for 1 cent an ounce, 16 cents a pound, with a minimum charge of 10, 15, or 25 cents according to the distance it is going. The ordinary merchandise charges for like distances vary from 25 cents to 40 cents for 1 pound. The "section-E" rate is, therefore,  
24 I. C. C.



lower than the ordinary rates for 1-pound packages anywhere in the United States, except in certain New England states where there is a minimum of 15 cents on ordinary merchandise packages. It is lower than the ordinary merchandise charge for 2-pound packages for distances over 800 miles. It is lower for 39 ounces for any distance over 300 miles; it is lower for 50 ounces for any distance over 200 miles, and is lower for 60 ounces for any distance over 900 miles. One may ship almost any article that can be shipped at the higher rates—only a few articles are exempt—but one must prepay the charges and must not fail to mark his package as indicated.

#### SECTION-D RATES.

Section D is called a post-office competition rate, and covers a list of articles which are admitted to the mails at the same rates. The express carrier, however, gives a discount of 2 cents on each package weighing 50 ounces or more. This is a shrewd bid for packages carrying charges of from 23 cents upward. This rate is intended for the use of the man who ships thousands of books, or calendars, or almanacs, or catalogues, circulars, handbills, lithographs, pamphlets, programs, or photographs, all of which are named in section D, and is not intended for the use of the man who ships but an occasional book, pamphlet, or photograph. The large shipper prepares his packages properly to secure the low rate, but the occasional shipper fails to write "value not exceeding \$10," for he does not know of the advantage this brings and he therefore does not get the low rate. He may even write on his package "value, \$5," but not get the rate unless he pays in advance. The agent will not demand it. Furthermore, if he neglects to mark the nature of the contents on the package he must pay the higher charge even if all other requirements be fulfilled. It is hard for the ordinary citizen to understand all this, and harder for him to forget the injustice when he learns, as he does sooner or later, that he has been overcharged on account of a technicality.

#### STILL LOWER SECTION-A RATE.

It is harder still for the shipper to discover that there is a still lower rate available on the same articles if he knows how to get it. The so-called section-A rate makes a distinction in favor of the man who is shipping the same articles for free distribution, as advertisements, which under section D are charged at 8 cents a pound. If a shipper of catalogues or blotters, books, cards, chromos, circulars, etc., is willing to declare that they are for "free distribution," merchandise pound rates are applied, which for any rate of less than \$8 per 100 pounds is cheaper than the section-D rate when the package



weighs over 4½ pounds. With these two schedules and the merchandise graduated scale provided in the body of the classification to cover the same general classes of articles, it is not surprising that three different shippers of the same identical article may be charged three different rates between the same points, according to their knowledge or lack of knowledge of the requirements with respect to marking, prepayment, or description of contents.

It is contended by the shippers, with much show of reason, that if it is profitable for the express companies to carry some classes of merchandise at the rates named in sections A, D, and E, which are very much lower than the merchandise rates, that higher rates than these are unreasonable, and "this Commission is likewise justified in holding that such lower rate is reasonable or at least not unreasonably low because it is the voluntary rate of the carrier."

#### SCALE RATES.

In addition to these section A, D, and E rates, a series of scale rates providing lower charges on a variety of products are published. Cheese, for example (under scale Z), is rated at from 60 to 80 per cent of merchandise pound rates with a minimum of 25 cents for each company carrying. Live poultry and fowl in crates are charged, under scale O, at from 74 to 80 per cent of the merchandise rates. Eggs, under scale M, command from 60 to 80 per cent of the merchandise rate; minimum charge, 35 cents.

"General specials" take the so-called scale-N rate, which varies in relation to the merchandise rate, from 60 to 80 per cent thereof. A minimum of 35 cents is charged on this class.

Scale-K rates provide for the transportation of temperance beverages generally, and beer. Charges vary from 60 to 80 per cent of the merchandise rate, the minimum charge being 30 cents.

Scale L covers the shipment of berries in crates, providing package charges for various sizes of crates, with a minimum of 35 cents per shipment. The 100-pound rate on berries varies from 60 to 80 per cent of the merchandise rate and the package rate varies from 5 cents on a 24-pint crate to \$12 on a refrigerator box containing eight 24-quart crates, dependent upon the length of the haul.

Scale M provides a case rate on eggs, which varies from 14 cents for a case of 30 dozen to \$3.30 for a case of 36 dozen, according to the distance carried.

Scale J provides a carload rate on horses. The maximum number of horses carried in a car under this rate is 28, and the rules provide that the charges must be made on an estimated weight of 10,000 pounds per car. This applies, although the shipment may weigh considerably more than 10,000 pounds, if loaded to the limit above

named. The carload rate varies from \$350 per car between points, where the merchandise rate is over \$3.50 and not over \$4 per 100 pounds, to \$1,100 per car for distances where the merchandise rate is over \$13.25 and not over \$13.50 per 100 pounds. On shipments moving to points where the rate is less than \$3.50 per 100 pounds, carloads of horses are charged for at the merchandise pound rate on the basis of 10,000 pounds per car. Thus a carload of 28 horses moving from Chicago to New York, for example, would be carried for \$250. At the first-class freight rate, 28 horses averaging 1,200 pounds, each, loaded in a freight car, and carried from New York to Chicago, would produce to the railroad company \$252. In the case of horses, at least, it will be seen that the express company does not exact the equivalent of the full first-class freight rate, and, apparently, the railroads are satisfied to accept 50 per cent of the first-class freight rate for the services performed by them in connection with the carriage of horses for express companies in passenger trains. The express company, of course, is relieved of terminal expense which applies to shipments of other kinds, for horses are loaded and unloaded by the owners and cared for en route by the owner's representatives, free transportation for whom is supplied by the express company. The number of attendants carried free varies with the different companies.

While the express classification presents these complicated features, it is nevertheless much simpler than the official freight classifications of the rail carriers. Generally speaking, it is a classification of exceptions, in that merchandise rates apply to all articles not specifically named therein as taking a higher or lower rate. The articles named in the classification as taking higher than merchandise rates are described by name and the conditions of packing and shipment are included. The rates are stated in some multiple of the merchandise rate.

The arrangement of the classification is such as to lead to the mystification of the rate seeker. The articles classified are ostensibly in alphabetical order but not really so. If one sought to find "butter" in the list he would seek in vain under B for it, but if he consulted an index would find therein reference to a page and an item number and at the page designated would find under the letter G the designation "general specials," and under "general specials" "butter and imitations of butter." He would not find pianos under P nor violins under V, but both under M—"musical instruments." This arrangement is excellent for the man who knows, but mystifying to one who does not know.



## SIMPLER CLASSIFICATION NEEDED.

For the simplification of this classification, it is suggested that instead of the present form, all articles taking higher than merchandise rates shall be grouped under the rate prescribed, as, for example: (a) Under the heading " $1\frac{1}{2}$  times merchandise," there should appear an alphabetical list of all the articles taking that rate; (b) under the head of "double merchandise" an alphabetical list of all the articles taking that rate.

Like provision should be made for each rate higher than merchandise, and the entire list of articles should also be arranged alphabetically, with a statement of the rate applying to each. Thus at a glance one could consult a list showing all articles that are charged for at a specified rate, or could determine at what rate any specific article would be charged.

Likewise, it is believed that the classification should be simplified by abolishing the contradictory term "general specials," and similarly grouping the articles taking lower than merchandise rates under headings, defining the proportion of the merchandise rate which shall apply, as, for example, three-quarters merchandise, one-half merchandise, etc. By this method of stating the rates the present complicated and obscure system would be so simplified that all could understand. There would be but one base rate—the merchandise rate. All others would be stated in some multiple or some fraction of this rate. An ideal scale would be one that would be constructed on the decimal system, and thus, instead of "d. mdse." being the designation, as now, for double the merchandise rate, that rate would be stated as 200 per cent of the merchandise rate; instead of three-quarters merchandise such a rate would be stated as 75 per cent of merchandise rate.

After full consideration it would appear to be fair that foodstuffs and beverages should take a rate no higher than 75 per cent of the merchandise rate and that a minimum weight of 10 pounds be charged for. The rule limiting the express charges on articles of food and beverages to 75 per cent of the merchandise rates named herein should not operate, however, to restrain the carriers from making lower rates by special commodity tariffs to govern shipments of such commodities moving in large quantities, but is intended to govern only in shipments of packages and parcels.

## BURDENSOME RULES.

One of the causes of complaint on the part of shippers represented during this investigation has been the code of rules which these carriers have established for their government. Much time has been given to the consideration of these rules. It is proposed to so amend



them as to eliminate therefrom those unjust provisions which have been the cause of dissatisfaction.

Rule 1 as published governs the receipt of shipments by the carrier. It appears that this rule may with advantage to both the shipper and the carrier be amended, so that the shipper may be induced to inscribe a return address upon all packages. In order to enforce this reasonable requirement it should be provided that a shipper who refuses to furnish a return address shall be required to prepay the charges.

#### STATEMENT OF VALUE.

Some such rule is necessary to protect the careless shipper, for in event of the inability of the carrier to deliver the package, this will provide an address to which the notice of nondelivery, hereinafter required, may be mailed. Also it will protect the consignor's interests in the prosecution of claims for loss.

Rule 1 also provides that a receipt of the prescribed form must be given to the shipper and that the shipper shall be required to state the value of the shipment, which value must be inserted in the receipt. If the shipper declines to state the value of the shipment, the agent is required to write or stamp on the receipt "Value asked and not given." Under this rule the carriers' agents have formed the habit of stamping the phrase on a supply of receipts in advance, as a labor-saving method, with the result that receipts are frequently given to shippers bearing this phrase, even when the value has been declared, and more frequently without inquiry of the shipper as to the value. Under the terms of the receipt, the insertion of the statement "value asked and not given," automatically places a limit of \$50 on the liability of the carrier, and for losses in excess of that sum the carriers, as a rule, decline to recognize their liability. The circumstances of the giving of the receipt are such that, if the phrase appeared upon a receipt in which a value of \$100 was shown, the shipper would have difficulty in proving that that amount was not written in subsequent to the giving of the receipt. The situation would be further complicated if the carrier's agent had neglected to assess the correct charge, as frequently happens, for the shipper would then be deprived of the supporting proof that he had paid charges based on the higher valuation.

It has, therefore, been deemed prudent to prohibit the use of rubber stamps and to require the carriers to be bound by a rule which shall require the declared valuation to be written into the receipt or a declaration that the valuation has not been given shall be written therein. The use of the rubber stamp, although it appears not to have been intentionally provided for that purpose, has resulted in the careless habit on the part of some of the carriers' agents of

neglecting to notify the shipper of the necessity for declaring valuation in order to protect his rights, and in failure to collect the proper charges. It is believed that the abolition of this rubber stamp, leading to negligence and carelessness will eliminate much of the dissatisfaction that has arisen from this cause.

For the better protection both of the shipper and of the carrier, it is believed that this rule should be further amended so as to require that shipments must be packed in a manner to insure safe transportation with ordinary care on the part of the express companies, and that packages containing fragile articles or articles consisting wholly or in part of, or contained in, glass must be plainly marked to indicate the nature of the contents. This rule is suggested for the protection of the carrier and for the benefit of the shipper, in order that the limitation of the carriers' liability on such shipments may be eliminated from the tariffs. Heretofore such shipments have only been accepted by the carrier at owner's risk or owner's risk of breakage, phrases usually construed to the disadvantage of the shipper in the settlement of claims.

#### ROUTING.

Rule 2 of the classification provides that the rates of the carriers are conditioned upon their right to route business as they may elect. The application of this rule has been treated of elsewhere, under the general heading of "Circuitous routing of shipments," and it is only necessary here to state that the rule should be so amended as to comply with the suggestions herein above outlined.

#### PREPAYMENT OF CHARGES.

Rule 3 governing the prepayment or guarantee of charges needs only to be amended in so far as paragraph *b* is concerned. Paragraph *a* names the requirements as to the prepayment of charges. The amendment of paragraph *b* has been suggested in that portion of this report dealing with the new form of waybill and label prescribed for prepaid shipments. The following is suggested as a proper form of the amended rule.

"When charges are prepaid, the driver or receiving clerk shall attach to the package the prescribed form of label, which shall show the weight, value, and charges collected. All packages bearing a driver's or receiving clerk's prepaid label shall be waybilled upon the prescribed form of prepaid waybill. A duplicate copy of which waybill in the form of a label must be affixed to the package or to a tag attached to such package. Packages bearing either one of the above labels shall be delivered at destination to the consignee without collection of charges to cover any part of the carriers' service;



but in event of the failure or neglect of the forwarding agent to assess the proper legal charge in the first instance, the carrier shall look first to the consignor to collect the undercharge. This inhibition of the collection of charges from the consignee should not deter the carrier from collecting any customs dues or charges from the consignee that have not been prepaid by the consignor. Under no circumstances shall delivery be withheld from a consignee of packages bearing either one or both of the prescribed prepaid labels."

Rule 4 governing prohibited shipments requires no change.

#### SERVICE DEFINED.

Rule 5 provides that the established rates and charges of the express companies include free delivery and collection only at points where wagon service is maintained, or within the established collection and delivery limits at such points. This rule is objectionable in that it is so indefinite that the shipper can not ascertain whether a given shipment will be delivered to the consignee or not. Therefore, as an accompaniment to the directory heretofore prescribed, which names the stations where free-delivery service is maintained and defines the limits of such free-delivery service, it seems essential that this rule should be amended so as to read:

The established rates and charges include the pick-up at the address of the shipper and free delivery to the consignee at the address inscribed upon the package at all points on the lines of said companies designated [in the directory, heretofore referred to] as free-delivery stations: Provided, however, that the companies shall not be required to pick up or deliver at addresses outside of the established free-delivery limits, nor at stations which have not been designated as free-delivery stations.

A further rule appears to be necessary that "at points where arrangements have been made by the express company with a local carrier for the delivery of shipments addressed to points beyond the established free-delivery limits, the shipment will be forwarded to the consignee's address by such local carrier, or on request of the consignee will be held until called for, and that written notice will be given to the consignee on arrival thereof."

#### NOTICE OF LOSS.

Rule 6 provides that agreements as to the time of the delivery of express matter must not be made, and, while this appears to be a reasonable provision in view of the character of the service extended by these carriers, it seems requisite that further conditions of delivery should be prescribed and that the rule should be that, in the event of the nondelivery arising out of loss or destruction of the shipment, the company shall immediately give notice to both the shipper and the consignee of such loss or destruction, and that in the event of the nondelivery of a shipment by reason of the consignee declining to



accept the same, the agent at destination shall immediately mail to the consignor a written notice of the refusal of the consignee to accept the shipment.

It appears that a very considerable number of shippers have formed a habit of ordering goods shipped by express and upon arrival declining to accept them, employing this means to secure an extension of time in the settlement of their accounts with the consignor, with the result that the carriers' storage facilities are overtaxed. It would appear to be reasonable that when a shipment has been tendered to a consignee for delivery, and acceptance declined, moderate storage charges should accrue against the consignment.

Rule 7 provides for the assessment of charges on actual gross weight and requires no change.

Rule 8 concerning the graduated scale and the application of rates and charges must of necessity be greatly modified to conform to the system of rates hereinafter proposed. Amendments to this rule suggested by the carriers become obsolete in view of the proposed new rate structure.

#### AGGREGATING SHIPMENTS.

Rule 9 provides for the assessment of charges upon two or more packages upon their aggregate weight, when shipped by one shipper at the same time to one consignee at one local address. This rule required the application of charges as on 20 pounds weight for each package weighing less than 20 pounds contained in such a shipment. It also provided for the assessment of charges upon aggregated weights, similarly estimated, when such shipments were received by one consignee at one point from a common point of origin, although the shippers of each of the packages may not have been the same. This rule has given rise to many abuses in its misapplication to shipments which were not entitled to its benefits. And in many cases shipments that were entitled to receive the benefit of this rule were not given the advantage prescribed by it.

The law gives to every shipper the right to bulk his shipments when but one delivery is to be made, and although the larger package may contain a hundred or more smaller ones, the rate to be applied will be that fixed for the large package—the aggregation of packages.

The rule adopted by these carriers has proved discriminatory in practice even though it may not have been designed to give advantage to any particular shipper or class of shippers. The fault, however, seems to be rather one of misinterpretation than of deliberate misapplication. A reasonable rule would be the following:

Provided a lower charge is made thereby, two or more packages forwarded by one shipper at the same time upon one receipt to one consignee at one local address must be charged for as if for one package on the aggregate weight, provided, however, that

when such shipments average less than 10 pounds per package charges shall be assessed on basis of 10 pounds for each package.

*Example.*—When the total weight of the several packages divided by the number of packages gives a quotient less than 10, charge on basis of 10 pounds for each package. If the quotient so obtained is over 10, charge on basis of total actual weight.

Shipments of different classes aggregated as above shall be charged for at the highest rate applicable to any article in the shipment.

When articles carried at merchandise pound rates are aggregated in accordance with (a), the minimum charge applies to the entire shipment.

#### RETURN OF UNDELIVERED PACKAGES.

Rule 10, governing the return of shipments to consignors, provides for the assessment of charges upon aggregate weights. The same rule should apply to returned shipments as to shipments forwarded, as indicated in the previous paragraph.

Subdivision b of this rule provides that when shipments have been delivered and are afterwards ordered returned by the consignor the charges paid by consignee may be refunded and billed against the original consignor for collection.

The rule should be that after delivery of a shipment and collection of charges thereon a refund of the charges must not be made.

Paragraph C provides that orders to return shipments by mail must not be accepted. This should be so amended as to provide that when the value of a shipment does not exceed \$25 it may be returned by mail when the order to so return is accompanied by the necessary postage stamps and postal registration fees. A reasonable charge by the express company for its service in this connection would be 10 cents.

The same rule, under subdivision d, provided for the assessment of 25 cents per 100 pounds, with a minimum charge of 50 cents, for returning or reshipping undelivered packages by railroad, including the procurement and return to the shipper of the railroad bill of lading. Shippers complained of this charge as unreasonable and viewed it as intended to prohibit them from employing the railroad freight service for the cheaper return or forwarding of undelivered express shipments.

The rule should provide that—

Undelivered packages originally forwarded by express may, by shipper's order, be returned or forwarded by freight under the following conditions:

1. When the shipper desires to instruct the agent at destination to return or reship undelivered packages, the charges on the outward shipment (if not prepaid), together with the reshipping charge provided in following section must be forwarded to the agent at destination with instructions covering the return or reshipment by freight. Any instructions to reship to a consignee other than the shipper must be accompanied by the approval of the agent at shipping point or, in the absence of such approval, by the original shipping receipt, which must also be indorsed by the shipper showing disposition.



2. If it is desired to have the outgoing charges and reshipping charge billed back to the shipper through the agent at shipping point, the instructions to reship must be filed with the originating agent.

3. The charge for return or forwarding by freight will be 10 cents per 100 pounds, with a minimum charge of 25 cents in addition to all unpaid outgoing express charges. No charge shall be made for the return of the bill of lading.

4. When shipments consist of two or more packages or two or more shipments, the reshipping charge in section 3 shall be computed on the basis of the actual gross and established minimum charge the same as if consisting of one package only.

#### VALUATION.

Rule No. 11 concerns the assessment of valuation charges with which subject and the amendment of the carriers' practices with respect thereto we have dealt in a previous paragraph herein. As a more definite statement of the rule, however, it is suggested that it should read:

The rates governed by this classification are based upon a value of not exceeding \$50.00 on each shipment of 100 pounds or less, and not exceeding 50 cents per pound, actual weight, on each shipment weighing more than 100 pounds and the liability of the express company is limited to the value above stated unless a greater value is declared at time of shipment, and the declared value in excess of the value above specified is paid for, or agreed to be paid for, under the schedule of charges for excess value in the following paragraph of this rule; and in case of partial loss or damage the express company shall not be liable for more than such proportion of the same as \$50.00 if 100 pounds or less in weight, or 50 cents per pound if weight exceeds 100 pounds, or the value declared, bears to the actual value if greater.

When the value declared by the shipper exceeds the value of \$50.00 on a shipment weighing 100 pounds or less, or 50 cents per pound on a shipment weighing more than 100 pounds, the charge for the excess value will be at the rate of 10 cents on each \$100.00 or fraction thereof (one-tenth of 1 per cent).

#### C. O. D. SHIPMENTS.

Rule 12 provides for the government of c. o. d. shipments. The chief complaint on this subject has been delay in making the return of collections. We have dealt with this branch of the subject elsewhere in this report, providing that such returns must be made within 24 hours.

Except for this amendment we have no suggestions for change in the present practice of the carriers in this service which seems in the main to give general satisfaction. We have had numerous complaints that the charges assessed for the return of c. o. d. collections are excessive, but these complaints have not been convincing in view of the greater evidence that shippers place a high value upon the facilities thus provided for them. Charges may seem disproportionately heavy when small amounts are collected, but it must be considered that the carrier performs a service in the collection of the accompanying bill which is the same, whether the amount collected be great or small. The shipper who employs the services of an express



company as agent to collect a small amount must expect to pay his agent for this service, not upon the basis of a commission on the amount collected, but in some minimum charge which shall be remunerative to that agent, for the time and labor involved.

There have been many complaints from merchants who send out by express a miscellaneous lot of merchandise to consignees under a plan which allows the consignee to examine and select such articles as he may wish to buy and return the remainder, paying the express company the price of the articles selected and retained. The carrier provides a rule under which examination and partial delivery is permitted only when the consignor has executed a contract releasing the carrier from all liability for loss. The complaints concern the declination of the carriers to pay claims for losses on such shipments, and complainants seek to have the rule abrogated.

Services of this kind are not such as the carrier is required to perform. It virtually puts the carrier in the position of sales representative of the consignor. If the carrier as a matter of accommodation to the shipper performs this service for him, it has the right to prescribe conditions designed to protect it from possible fraud. The shipper who wishes the carrier to perform such service should be bound by the conditions which the carrier prescribes.

Rule 13, covering the procurement and return to consignor of consignee's receipt for packages delivered, has not been complained of, and the charge of 10 cents for this service, in the absence of any showing to the contrary, appears to us reasonable.

#### PREScribed PACKAGES.

Rule 14, prescribing certain forms of packages for express shipments, has heretofore been considered by this Commission, and, in some of its features, is now the subject of a ruling of this body. No complaints have been heard during this investigation as to the operations of this rule.

#### CARLOAD AND BULKY SHIPMENTS.

Rule 15 governs carload and bulky shipments. Its provisions are obscure and subject to two or more interpretations, capable of being made of discriminatory advantage or disadvantage. It provides that charges on property which requires a special car for transportation must be computed according to the classification; that is to say, assessed at merchandise rates double, three times, or more of the merchandise rate as the case may be. It provides, however, that if the shipment weighs less than 10,000 pounds the charge must not be for more than 10,000 pounds at merchandise rate.

If weighing more than 10,000 pounds, the charge must be for the actual gross weight at merchandise rates.

A strict interpretation of this rule would require payment of twice as much for a shipment taking double the merchandise rate and which weighed 10,000 pounds as for a shipment weighing 9,550 pounds and nearly twice as much for a shipment weighing 10,050 pounds. The rule should be amended to read as follows:

Property which, by reason of its great bulk, length, or weight, can not be loaded or carried in the ordinary express car and for which a special car must be provided, must not be accepted for shipment until the dimensions, the weight, and a complete description of the property have been reported to the superintendent and arrangements have been made by him for handling and forwarding the shipment through to destination, if such arrangements can be made.

The minimum charge on such a shipment must be the charge on 10,000 lbs. at the merchandise rate; if the shipment consists of articles or commodities that, under the classification, are subject to higher than single merchandise rate and the gross weight is less than 10,000 lbs. the charge must not be more than the charge for 10,000 lbs. at the merchandise rate; if weighing 10,000 lbs. or more, the charge shall be for the actual gross weight at merchandise rate.

The charge on less than a carload shipment carried in regular express car must not be greater than the charge on a carload shipment in a special car.

#### NONE BUT THROUGH RATES.

Rule 16 formerly provided for the assessment of charges—

When shipments pass over the lines of two or more companies and the shipping point or destination is an exclusive office, the through merchandise rate must be made by combining the local rates via the transfer point as shown in originating company's tariff which produces the lowest through rate, and unless otherwise specifically provided the through merchandise rate so computed must be used as the basis for ascertaining the classification charge.

When the provisions heretofore suggested for the establishment of through routes and rates have been put into effect by the carrier the need for the above section of this rule will disappear.

The remaining provisions of the rule concern the division of earnings. We have said to these carriers in connection with the discussion of the establishment of through routes and rates that in their arrangements for the division of earnings due consideration should be given by the connecting carrier to the surrender by the originating carrier of its right to retain possession of the shipment for the longest haul possible via its own lines, and that divisions shall be agreed upon which shall compensate the originating carrier for its sacrifice. Some such arrangement is essential to the proper working of a scheme of direct through routes which will effectively stop the delays consequent upon the practice of indirect routing.

As a substitute for rule 16 the following is suggested:

All rates and charges of these companies are through rates applying via the established through routes.



Unless otherwise provided, when shipments are transported over the lines of two or more companies, one through minimum charge must be assessed.

The minimum charge does not include any charge for excess value.

Rule 17 provides that the publication of a commodity rate removes the application of the classification scale or rating on that article between the points where the commodity rate is made effective.

Rule 18 provides that packages containing articles of more than one class shall be charged at the rate applicable to the highest rated article contained therein unless specifically provided to the contrary.

Rules 19 to 24, inclusive, define terms which describe methods of packing and require no change.

Rule 25 defines territorial groups of states which influence rates, the necessity for which will disappear with the establishment of the rate system proposed herein.

Rules 26 and 27 cover changes of destination, in transit, and reconsignments. The provisions of these rules seem reasonable and were not complained of in this proceeding.

#### 9. DELAYS IN THE RETURN OF C. O. D. COLLECTIONS TO CONSIGNORS.

Without going into the causes which have resulted in the retention of such collections by the carrier it may be said that in general the fault is due to the neglect of agents either at receiving or forwarding stations. While this is true in the main, the annoyance of the shipper is heightened by the long-drawn-out investigations which follow his complaint and claim, resulting in further delays. Cases of the retention of c. o. d. collections for more than a year have been reported to the Commission. The character of these complaints warrants the conclusion that the rule should be that the delivering agent shall make return of all c. o. d. collections to the consignor or to the agent at the point of origin within 24 hours after delivering such shipments, and that if such return is made to the agent at point of origin, he in turn must make settlement with the consignor within 24 hours after the receipt thereof. The failure of the carriers' agents to strictly conform to this rule should not be the cause of further delay in the settlement of such claims. Strict enforcement of this rule should be enjoined upon the agents of the carriers. Furthermore, the payment of claims for c. o. d. collections withheld should be made promptly on presentation of proper proof of delivery and failure to make return. The shipper is not interested in locating the responsibility for neglect, and should not be compelled to await the settlement of that question by the carrier before receiving his due.



## 10. METHOD OF STATING RATES.

Simplicity is the ultimate essential in express matters. Upon this principle the postal service has been developed. Instead of becoming more and more involved in classification, rules, and rates, as has been the tendency, there must be a complete reversal of policy in this regard if the express company is to avail itself of its opportunities. And it may further and no less emphatically be said that upon no other principle can there be an avoidance of constant conflict with the law, for it is manifest that neither shippers nor expressmen know the express rates of the country, nor can experts be certain that the rates they quote are certainly the lawful rates, so many are the conflicting rules, routes, and scales.

As a fundamental we must have a simpler method of stating rates, one that is understandable; a foundation must be laid upon which to build a rate structure that shall be equitable. There is certain to be discrimination so long as there is indefiniteness and ignorance.

There are some thirty-five thousand express stations in the United States. To separately state the rates from each one of these stations to each of the others requires the statement of over 600,000,000 rates. The ordinary express agent is lost in the attempt to find a rate. With files of all the tariffs of all the express companies at their command, the rate clerks of this Commission find it difficult and uncertain work to find the lowest legal rates applicable to shipments moving between two points, particularly when there are many possible routes and transfer points via which the shipment may move. It is small wonder, therefore, that so many overcharges and undercharges result. The loss of time, loss of revenue, and lack of efficiency resulting from this system of rates are incalculable.

We purpose to substitute for these six hundred million rates, a rate system, based upon the division of the country into 950 blocks, each of which is outlined on every schoolboy's map—the square formed by one degree of latitude and longitude. These blocks have an unvarying length of 69 miles and a variable width of from 62 to 45 miles, according to their location, and may be considered as embracing an average of 3,500 square miles each.

These blocks are numbered in series beginning at the extreme northwest boundary of the state of Washington with the number 101. This tier of blocks is numbered consecutively so far as they lie within the United States. The block 101 is bounded on the north by the forty-ninth parallel of north latitude, on the west by the one hundred and twenty-fifth meridian.

The second tier of blocks begins with No. 201, located directly under No. 101. Each block in each tier is numbered consecutively and falls directly under the same numbered block in the first tier. Thus

the tier in which each block is located is indicated by the number of hundreds with which it is initialed and the row in which it is located is indicated by the number of tens with which it terminates. Thus No. 1724 is in the seventeenth tier and twenty-fourth row.

All blocks whose numbers terminate in 15, for example, will be found on the map directly under one another from No. 115 to No. 1815. Each block having as a terminal the number 35 will be found in one row, beginning with No. 135 at the northern border of the United States and ending at No. 2035 on the Gulf of Mexico.

By stating rates as applying from block to block instead of from point to point simplicity will result and the actual number of express rates in existence will be reduced from over 600,000,000 to less than 345,000. But even 345,000 separate rates would be an intricate structure for a local agent to handle, and so we purpose to still further reduce this volume by requiring these carriers to publish a separate and distinct tariff to apply from each block to all other blocks.

There being 120 blocks in which there are no railroads or express stations, the total number of blocks between which rates are to be made is 830. It is manifestly unnecessary that the rates between all blocks shall be published in one tariff and in the hands of each express agent. It is sufficient that the express agent at every station shall know what rates apply between his block and each one of the other blocks. There being but 830 blocks, a single sheet of paper will give reference to every block number in the United States, and alongside of this block number will be published the number of the scale of rates applying between the block of origin and the block of destination.

All of the stations within each of these blocks are grouped as one point, and thus the rates are stated from one small group of common points known as a block to each of the other small groups of common points known as a block. Manifestly, however, it would not be practicable to publish the rate applicable upon each package between such blocks without producing a tariff of great size and leading to infinite confusion. To avoid these difficulties, and to furnish the shipper an easy method of discovering what his rate may be upon a package of a given weight, rates have been determined with respect to each package and stated in a set of scales, thus:



[illegible]



SCALE No.....	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Over 50 and not over 51 pounds.....	\$0.38	\$0.40	\$0.43	\$0.45	\$0.48	\$0.51	\$0.53	\$0.55	\$0.58	\$0.61	\$0.63	\$0.66	\$0.68	\$0.71	\$0.74	\$0.76	\$0.79	\$0.81	\$0.84	\$0.86
" 51 " " 52 "	.38	.41	.43	.46	.49	.51	.54	.56	.59	.62	.64	.67	.69	.72	.75	.77	.80	.82	.85	.88
" 52 " " 53 "	.39	.41	.44	.46	.49	.52	.54	.57	.60	.63	.65	.68	.70	.73	.76	.78	.81	.83	.86	.89
" 53 " " 54 "	.39	.42	.44	.47	.50	.53	.55	.58	.61	.63	.66	.69	.71	.74	.77	.80	.83	.85	.88	.91
" 54 " " 55 "	.39	.42	.45	.47	.50	.53	.56	.59	.62	.65	.68	.71	.73	.76	.79	.82	.85	.87	.90	.93
" 55 " " 56 "	.40	.42	.45	.48	.51	.54	.56	.59	.62	.65	.68	.71	.73	.76	.79	.82	.85	.87	.90	.93
" 56 " " 57 "	.40	.43	.46	.48	.51	.54	.57	.60	.63	.66	.69	.72	.74	.77	.80	.83	.86	.88	.91	.94
" 57 " " 58 "	.41	.44	.46	.49	.52	.55	.58	.61	.64	.67	.70	.73	.75	.78	.81	.84	.87	.90	.92	.95
" 58 " " 59 "	.41	.44	.47	.50	.53	.56	.59	.62	.65	.68	.71	.74	.77	.80	.83	.86	.89	.92	.94	.97
" 59 " " 60 "	.41	.44	.47	.50	.53	.56	.59	.62	.65	.68	.71	.74	.77	.80	.83	.86	.89	.92	.94	.97
" 60 " " 61 "	.41	.44	.47	.50	.53	.56	.59	.62	.65	.68	.71	.74	.77	.80	.83	.86	.89	.92	.94	.97
" 61 " " 62 "	.42	.45	.48	.51	.54	.57	.60	.63	.66	.69	.72	.75	.78	.81	.84	.87	.90	.93	.96	.99
" 62 " " 63 "	.42	.45	.48	.51	.54	.57	.60	.63	.66	.69	.72	.75	.78	.81	.84	.87	.90	.93	.96	.99
" 63 " " 64 "	.42	.46	.49	.52	.55	.58	.61	.64	.67	.70	.73	.76	.79	.82	.85	.88	.91	.94	.97	.1.00
" 64 " " 65 "	.43	.46	.49	.52	.55	.58	.61	.64	.67	.70	.73	.76	.79	.82	.85	.88	.91	.94	.97	.1.00
" 65 " " 66 "	.43	.46	.49	.52	.55	.58	.61	.64	.67	.70	.73	.76	.79	.82	.85	.88	.91	.94	.97	.1.00
" 66 " " 67 "	.43	.46	.49	.52	.55	.58	.61	.64	.67	.70	.73	.76	.79	.82	.85	.88	.91	.94	.97	.1.00
" 67 " " 68 "	.43	.47	.51	.54	.57	.61	.64	.68	.71	.74	.78	.81	.85	.88	.91	.95	.98	.1.00	.1.03	.1.06
" 68 " " 69 "	.44	.48	.51	.54	.58	.62	.65	.69	.72	.76	.79	.83	.87	.90	.94	.98	.1.01	.1.05	.1.09	.1.12
" 69 " " 70 "	.44	.48	.51	.55	.58	.62	.65	.69	.72	.76	.80	.84	.87	.91	.95	.99	.1.02	.1.06	.1.10	.1.14
" 70 " " 71 "	.45	.48	.52	.55	.59	.63	.66	.70	.73	.77	.81	.85	.88	.92	.96	.1.00	.1.04	.1.07	.1.11	.1.15
" 71 " " 72 "	.45	.49	.52	.56	.60	.64	.67	.70	.74	.78	.82	.86	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17
" 72 " " 73 "	.46	.49	.53	.56	.60	.64	.67	.71	.75	.78	.82	.86	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17
" 73 " " 74 "	.46	.50	.53	.57	.61	.65	.68	.72	.76	.79	.83	.87	.90	.94	.98	.1.01	.1.05	.1.09	.1.13	.1.17
" 74 " " 75 "	.46	.50	.54	.57	.61	.65	.69	.72	.76	.80	.84	.87	.91	.95	.99	.1.02	.1.06	.1.10	.1.14	.1.18
" 75 " " 76 "	.47	.50	.54	.58	.62	.66	.69	.73	.77	.81	.85	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20
" 76 " " 77 "	.47	.51	.55	.59	.63	.67	.71	.75	.79	.83	.87	.91	.95	.99	.1.03	.1.07	.1.11	.1.15	.1.19	.1.23
" 77 " " 78 "	.47	.51	.55	.59	.63	.67	.71	.75	.79	.83	.87	.91	.95	.99	.1.03	.1.07	.1.11	.1.15	.1.19	.1.23
" 78 " " 79 "	.48	.52	.56	.60	.64	.68	.72	.76	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24
" 79 " " 80 "	.48	.52	.56	.60	.64	.68	.72	.76	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24
" 80 " " 81 "	.48	.52	.56	.60	.64	.68	.72	.76	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24
" 81 " " 82 "	.49	.53	.57	.61	.65	.69	.73	.77	.81	.85	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17	.1.21	.1.25
" 82 " " 83 "	.49	.53	.57	.61	.65	.69	.73	.77	.81	.85	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17	.1.21	.1.25
" 83 " " 84 "	.49	.54	.58	.62	.66	.70	.74	.78	.82	.86	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26
" 84 " " 85 "	.50	.54	.58	.62	.66	.70	.74	.78	.82	.86	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26
" 85 " " 86 "	.50	.54	.59	.63	.67	.71	.75	.79	.83	.87	.91	.95	.99	.1.03	.1.07	.1.11	.1.15	.1.19	.1.23	.1.27
" 86 " " 87 "	.50	.55	.60	.64	.68	.72	.76	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24	.1.28
" 87 " " 88 "	.51	.55	.60	.64	.68	.72	.76	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24	.1.28
" 88 " " 89 "	.51	.56	.60	.65	.69	.73	.77	.81	.85	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17	.1.21	.1.25	.1.29
" 89 " " 90 "	.51	.56	.60	.65	.69	.73	.77	.81	.85	.89	.93	.97	.1.01	.1.05	.1.09	.1.13	.1.17	.1.21	.1.25	.1.29
" 90 " " 91 "	.52	.56	.61	.65	.70	.74	.78	.82	.86	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26	.1.30
" 91 " " 92 "	.52	.57	.61	.66	.71	.75	.80	.84	.88	.92	.96	.1.00	.1.04	.1.08	.1.12	.1.16	.1.20	.1.24	.1.28	.1.32
" 92 " " 93 "	.53	.57	.62	.67	.72	.76	.81	.85	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26	.1.30	.1.34
" 93 " " 94 "	.53	.58	.62	.67	.72	.77	.82	.86	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26	.1.30	.1.34
" 94 " " 95 "	.53	.58	.62	.67	.72	.77	.82	.86	.90	.94	.98	.1.02	.1.06	.1.10	.1.14	.1.18	.1.22	.1.26	.1.30	.1.34
" 95 " " 96 "	.54	.58	.63	.68	.73	.78	.83	.88	.92	.97	.1.01	.1.06	.1.11	.1.16	.1.21	.1.26	.1.31	.1.36	.1.41	.1.46
" 96 " " 97 "	.54	.59	.64	.69	.74	.79	.84	.89	.94	.99	.1.04	.1.09	.1.14	.1.19	.1.24	.1.29	.1.34	.1.39	.1.44	.1.49
" 97 " " 98 "	.54	.59	.64	.69	.74	.79	.84	.89	.94	.99	.1.04	.1.09	.1.14	.1.19	.1.24	.1.29	.1.34	.1.39	.1.44	.1.49
" 98 " " 99 "	.55	.60	.65	.70	.75	.80	.85	.90	.95	.1.00	.1.05	.1.10	.1.15	.1.20	.1.25	.1.30	.1.35	.1.40	.1.45	.1.50
" 99 " " 100 "	.55	.60	.65	.70	.75	.80	.85	.90	.95	.1.00	.1.05	.1.10	.1.15	.1.20	.1.25	.1.30	.1.35	.1.40	.1.45	.1.50

These scales are given here as typical, the accompanying order containing a full set of such scales from No. 1 to No. 294.

Let us now see, then, the method by which the rates will be stated in the tariff. At the head of the tariff sheet will appear the number of the initial block. Assume that this is block No. 952 in which is the City of New York. Below will be published the numbers of all the other blocks, and opposite each block number will be the scale of rates applicable between Block No. 952 and each of the other blocks in the country. A shipper, then, wishing to know the rate on a 10-pound package from New York to San Francisco, would first turn to San Francisco in the Directory of Stations and find the number of the block in which San Francisco is located (No. 1203). Turning, then, to the single-sheet tariff which shows the rate between Block No. 952 and all other blocks in the country, he would find Block 1203, and opposite 1203 would be the scale number applicable to packages of all sizes up to 100 pounds between New York and San Francisco. Scale 198, let us assume, is the scale applicable between these points. Then by looking at this scale he would find that the rate upon a 10-pound package, New York to San Francisco, was \$1.22. This would be the rate by all routes by all express companies. It would be the rate from all stations within the Block No. 952. It would be the rate to all stations in Block No. 1203. The rate might be made to change by the carriers themselves, or through the orders of this Commission, but the block number would not change. The only tariff that it would be necessary to reprint would be that which stated the scale number applying between the two blocks, for with the change in a rate a new scale number would be substituted. Thus there would be a permanent basis established for stating rates from which it would be unnecessary to deviate so long as the block system itself was adhered to.

A single sheet, stating the block numbers and the scale rates applicable thereto, together with the regular printed set of scales, will furnish all the rates between all the points in the United States, and these it would not be expensive to produce, nor would they be cumbersome to handle. To illustrate again, the shipper in New Orleans wishing to have transported a package to Portland, Me., first learns what the number of the block is in which Portland is situated. Then, turning to his tariff sheet, finds that that block carries a certain scale number. This scale gives him the rate applicable on whatever weight of package he wishes to have transported.

We recognize that such a system of stating rates between blocks will not be equitable as between points situated near to each other in adjoining blocks. For this purpose we have devised a method of stating rates between points in adjoining blocks. It is unnecessary here to go into the detail of this method further than to say that each



one of the blocks, approximately 50 miles square, has been divided into 16 subblocks or squares. These have been lettered from A to Q (omitting J to prevent confusion).

That is to say, each one of these large blocks in turn is subdivided into 16 smaller blocks which are called sub-blocks or squares. This is done so that points near each other within adjoining blocks shall not bear the full measure of the rates between the two most distant points in those blocks. Rates are stated from each of these sub-blocks to each of the sub-blocks within a radius of two blocks, or approximately 100 miles. For a more intimate presentation of this matter of stating rates by blocks and sub-blocks reference may be made to the appendix.

To recapitulate—

(1) The United States is divided into blocks approximately 50 miles square.

(2) Points within each block are common points, excepting as to adjacent blocks.

(3) Rates shall be stated in scales giving a rate applicable to packages weighing from 1 to 100 pounds.

(4) The scale applicable between two blocks is found by reference to the single-sheet tariff posted in each express office.

(5) A similar sheet gives the scale applicable to all points in sub-blocks located within a radius of two blocks or approximately 100 miles.

#### 11. RATES—VALUE OF EXPRESS PROPERTY AS RATE BASIS.

A reasonable express rate may not be fixed upon the basis of the value of the property owned and used by the express company (total for all companies, \$27,153,869). The record in the formal cases presented to us is replete with the suggestion that express rates should be made having this consideration chiefly in mind. Reference is frequently made to the oft-repeated declaration of the Supreme Court that a public utility is within certain limitations entitled to a rate which gives it a reasonable return upon the value of the property used in rendering the service. Accordingly, as a mere matter of mathematical calculation, it is shown that at least one of the express companies has received for three years past an average profit of 597 per cent upon the value of the property which it reports as owned by it, while all of the larger companies show a net revenue per year that is from 17 to 65 per cent profit on the value of their property. Therefore it is urged rates should be greatly reduced.

A moment's consideration would seem to brush aside any such theory. An express company is, in contemplation of the decisions of the Supreme Court in the *Express cases*, an agency of the railroad for doing small parcel business. What is the value of its property?



Clearly, we can not take the mere horses and wagons, desks and stationery, as the value of a property used in giving an expedited movement of freight by rail carrier. The railroad furnishes the property that is most valuable, and gives the greater portion of the service. If we are to base the rate upon value of property used (and certainly this is a primary consideration) we must consider not alone the express company's property, but that of the railroad that is used in giving these services; and once this is done it is quite evident that all of the estimates of the monumental earnings of the express companies based upon their investment in property are misleading.

The real asset of an express company is the contract which it enjoys with the railroad company. It has a monopoly in the carrying of small packages on the passenger trains of the railroad, but it has no more of a monopoly than the railroad itself has. It has no right to impose unreasonable rates by reason of the exclusive contract which it enjoys with the railroad. It must be treated as the railroad itself would be treated. It is an arm of the railroad; it is the railroad itself reaching out to the door and taking the package and delivering it again personally to the consignee. Now, all the railroads of the United States might do this work without adding by so much as a million dollars to the value of their equipment, for the railroad now furnishes the car, and with the addition of a few safes and desks the railroads could equip themselves for rendering an express service by hiring in all terminals the gathering and delivery to be done for them by trucking or local express companies. Indeed, many of the express companies themselves have no inconsiderable portion of their local service rendered by local transfer companies, so that investment or property owned may not be regarded as a basis for the decreasing of express rates. It is the railroad property which gives the greater part of the service upon which a reasonable return should be allowed, and not the express company, the value of whose property is comparatively insignificant.

To make this thought entirely plain, let us assume that two express companies are formed, one of which receives a contract from the Pennsylvania system, the other from the Baltimore & Ohio. The Pennsylvania express company makes an investment of \$10,000,000 in a plant consisting of buildings, automobiles, horses, wagons, and office furniture; the Baltimore & Ohio express company makes no such investment, its entire property consisting of a few safes and its office furniture, worth, perhaps, \$25,000, rents its offices, and hires its gathering and delivery service performed for it. We will further assume that the contracts made by these express companies with their respective railroads give to the latter an equal percentage, and that the express companies do the same volume of business upon the same rates. At the end of the year it is manifest that while the Penn-

sylvania express company might show a certain percentage of return upon the value of the property which it owns, the Baltimore & Ohio express company might exhibit a percentage of return many times greater, and yet no one would say that the rates of one should be reduced and the rates of the other increased because of this difference in the return shown. In one case operating expenses include much that in the other case is a charge upon capital.

It is a matter of common knowledge, and frequently referred to in this hearing, that these express companies taken as a whole are not the product of large investments. The original express company was a man with a carpet bag paying his railroad fare and traveling between New York and Boston with a few packages of an especially valuable nature. That carpet bag has evolved into an express car—in fact, into solid trains of express cars—with an expenditure on the part of the expressman of an inconsiderable amount of money. It has been impossible for us to ascertain how large the original investment in any of these express companies was. We feel safe, however, in the statement that, outside of the money which has been made in the express business, a million dollars would more than cover the original capital of them all. Their present wealth is the product of the contracts which they have been enabled to make with the railroad companies and of shrewd investments and speculations. They have bought their office buildings, stocks, and bonds out of the profits which they have made. When it is realized that this branch of the railroad business has been conducted without regulation, save such as a few of the states have given, for over half a century, and that an addition of 1 cent per package to-day yields to the express companies an addition of \$3,000,000 in revenue, the opportunities of the express companies to grow in wealth are manifest; and all of the money which they have made might have been withdrawn and distributed as dividends, leaving the express companies with little more tangible property than the original carpet bag, and yet this would in no way establish the reasonableness of their rates.

Furthermore, under the existing system of contracts it is quite evident that an express company might grow extremely wealthy and accumulate a great volume of property under rates that were in all ways reasonable, for the volume of its accumulations year by year depends not alone upon the rates that it charges, or its own expenditures as an operating company, but upon the contracts which it makes with the railroads which carry the express traffic. A shrewd express manager, availing himself of the needs of a railroad in a time of emergency, can secure a contract under which he gives but 40 per cent of his gross receipts to the railroad, whereas perhaps 50 per cent or more would be a reasonable figure. Under such a contract



express company could make rates that were beyond criticism and yet accumulate millions of dollars in surplus.

From these considerations it appears quite evident that the foundation of a reasonable rate can not be the return upon the property of the express company as such, no matter how offensively large or absurdly small this may appear to be when calculated from the balance sheet.

#### CAPITALIZATION AS A BASIS.

Nor is there real substance in the contention that rates may be made with respect to the capitalization of these companies (stock, \$63,523,300; funded debt, \$36,000,000; undivided profits, \$59,224,353). Much of what already has been said bears upon this matter as well. Some of these companies are not corporations but mere partnerships. Some have seen fit to capitalize their accumulated earnings, while others have not done so. The capitalization of these companies represents nothing more than the management's judgment as to the most expedient way of presenting the financial status of the company to the country. Some of those companies in which the largest original investment was made do not have the largest capitalization. Some of them—perhaps it might safely be said, all of them—have at times increased their capital or issued stock to secure favorable contracts with railroads. Others have capitalized accumulated surplus, the product of high rates and low contract percentages, while one or more from time to time has converted its surplus into securities upon which it has issued bonds of its own. These facts all go to show that there can properly be no relationship whatsoever between the capitalization of an express company and its rates. To allow a return upon this basis would put a premium upon mere bookkeeping methods which have no foundation other than the capricious policy of its owners.

Moreover, if capitalization were controlling, whatever unreasonable rates might have been exacted in the past, or whatever profits might have resulted from favorable contracts in the past, would now make necessary higher than reasonable rates, and thus progressively throughout the years that the express companies are continued in existence the people of the country would be paying a return to the express companies upon a capitalization that was unfair in its beginning. There is no sacredness in the stated amount of the capital stock of any company. When the courts speak of a return upon capital of a public utility they mean a return upon investment. The investor in a railroad, an express company, or a telegraph company should be compensated for the sacrifice that he has made and not paid a premium because of the manner in which he chooses to state his financial condition or his expectations.



## EARNINGS AS A RATE BASIS.

The total dividends paid by the 10 leading companies since 1854 have amounted to.....	\$212, 085, 392. 82
While they have in addition:	
Property and equipment amounting to.....	\$26, 065, 711. 68
Stocks owned.....	50, 575, 881. 16
Funded debt owned.....	54, 416, 468. 97
Other permanent investments.....	15, 611, 311. 16
Cash and current assets.....	36, 574, 253. 85
Other assets.....	2, 324, 842. 86
Or a total assets amounting to.....	185, 568, 469. 68
Their sundry liabilities as of June 30, 1911, amounted to.....	37, 277, 847. 77

Generalizing from these facts, it is a matter beyond contradiction that beginning 60 years ago practically with no assets whatsoever other than favorable contracts with one or more railroads, the express companies have out of their rates and the profitable investment of the proceeds of their operations been enabled to pay large dividends upon shares representing no investment and amassed over \$150,000,000 of property.

Last year (the fiscal year 1911) the 13 express companies before us had a gross transportation income of \$149,311,485, out of which they paid to the railroads \$73,956,455, leaving to themselves \$75,355,030. Their operating expenses amounted to \$67,996,759. Thus, after the deduction of all expenses connected with the operation of the express company as such, there remained a net operating revenue of \$7,358,271. There are bookkeeping intricacies involved in the statement of operating expenses which it is not necessary for us here to discuss. The net figure given allows a 6 per cent return upon all of the property reported as used by the express company in the rendering of express service (\$27,153,869), makes no deduction for services rendered to the railroads, includes the allowance of all taxes, accepts the estimates without question of the express companies as to the cost of their outside enterprises, such as handling of investments and money-order business, accepts all charges made by the express companies for new equipment as proper operating expenses; in short it is based upon the figures of the companies themselves as operating express companies.

We find thus that out of every dollar taken in over the counter of an express company it expends in round figures 50 (49.53) cents for rail transportation, 45 (45.54) cents for all of its own operating expenses, taxes, return on value of all property used including speculative realty, and retains as profit out of each dollar of gate receipts 4.93 cents. The figures given, of course, are for all of the 13 companies.

This net return may be increased by any one of several methods: (1) By an increase in the volume of business, especially by an increase in the volume of business on the higher rates for long distances, out

of which the express company gets a larger share in proportion to the service that it gives than out of its short-haul business; or (2) by a reduction in the percentage paid to the railroads, which has increased within the last 20 years from an average of less than 40 per cent on the gross business done to 50 per cent; (3) by an increase in the rates; (4) by a reduction in express operating expenses, the cutting down of the commission paid, the lowering of salaries, or greater efficiency in management. On the other hand, these net figures may be reduced by the counterplay of these same forces. It is unquestionably within the power of the railroad companies to "put the express companies out of business" by insistence upon such a large percentage of return that it could not be overcome by a decrease in express operating expenses; and a reduction of rates would have the same effect provided the railroad companies or the express companies themselves could not find means either by the increase in traffic or the reduction of expenses or the cost of express privileges to preserve the existence of the express companies.

As to the reasonableness of the amount paid to the railroad companies by the express companies, we find no occasion to express an opinion. This is purely a matter of contract between the two parties. The railroads long since saw fit to farm out their small-parcel traffic; Congress has seen fit to expressly recognize these small-parcel carriers, the express companies, as common carriers. Whether as between these two, the railroad and the express company, the percentage paid shall be 40 per cent or 90 per cent is a matter with which we can not deal, and in which the public has no interest excepting in so far as this might lead to the imposition of unjust charges upon other classes of traffic. When the express company was instituted it paid for the service rendered by the railroad, as would any other shipper, upon a tonnage basis. The railroad for its own convenience made a contract with the express company to do its small-package business, and it received therefor a certain amount based upon the total weight of this traffic. In the course of years this method gradually fell into desuetude, until now the railroads and the express companies are almost universally upon a percentage basis, which makes them partners in the profits; and the inevitable tendency of this arrangement is to increase those small-package rates upon which the railroad receives the greater proportionate return.

We may not fix express rates upon the basis of the earnings of the express company, for this is a matter which we can not control. The higher the rate the greater the proportion the railroad might exact, and thus with each increase in the allowance there would arise plausible excuse for increase in the express rates.

Nor do we feel justified in taking as any settled standard the operating expenses of the express company outside of its railroad



percentage, excepting as these figures tend to disclose by contrast between the various companies, whose figures widely differ, and by comparison with outside agencies rendering similar or partially similar service, as to what might be the reasonable expense to which a carrier of this character is put.

#### FREIGHT RATES VS. EXPRESS RATES.

A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying a small package upon a passenger train, or a train going at passenger speed, plus a reasonable compensation for the service of gathering, care, and delivering which the express company as such renders. Manifestly, under this definition, there should be a higher return to the railroad for the carriage of express matter than it receives upon its freight traffic. This should be so because of the superior character of the service given as well as to prevent the movement of ordinary freight upon passenger trains under express rates.

Can there be a fixed relationship between express and freight rates in the United States? We have sought to discover some such basis, and theoretically it should exist. Owing, however, to the theory or lack of theory upon which freight rates have been made, this is not found to be practicable. In Germany, where freight rates are fixed by the state upon a definite mileage basis, little regard being paid to competitive forces, the *eilgut* (fast goods) rate, which gives a freight movement upon freight or passenger trains moving at a speed of 28 miles per hour, is twice the first-class freight rate. This, it will be understood, covers only the conveyance charge and does not include the service of gathering or delivering. Moreover, these rates are made upon a minimum weight of 20 kilograms or 44 pounds. The rate is published for 100 kilograms (220 pounds), but a 20-kilogram parcel is charged two-tenths of the 100-kilogram rate. These *eilgut* rates are open to all forwarders, and in that country, as throughout Europe, independent companies undertake to gather and deliver parcel freight, bulking the same for movement by train and paying this *eilgut* rate.

To one familiar with the freight rates of the United States it is apparent that a system of express rates for the United States can not be made with relation to freight rates after the German method. Nevertheless it is necessary that an express rate should not be lower than a normal freight rate, and in the construction of express rates the railroad which furnishes the larger portion of the service which the express company undertakes to give should receive a compensation that will have relation to the charge which it makes for the carriage of freight. With this end in view we have made experiment to discover what, if any, system of rates could be instituted in any particular



section of the country that would have definite relationship to freight charges, and we have discovered that while this would be practicable upon some of the shorter lines of railroad and upon some of the larger systems where rates are made with respect to mileage, no one section of the country could be dealt with upon this principle, and no one express company operating over more than one line of road has made its rates, or could make its rates, upon such basis.

Perhaps another cogent reason for not adopting this basis is that the forces which go to the making of a freight rate do not in their fullness control the express rate. The two classes of service differ in more respects than in mere speed. The express service is essentially more popular—one which touches directly and intimately everyone, and not merely the manufacturer, the merchant, or the farmer. Express shippers are the unorganized mass of the people who have no means of bringing to bear pressure upon the express companies, excepting in the case of the merchant classes who use such service and who have heretofore generally been accommodated with special rates.

In searching for the proper relation to be established between express rates and freight rates we have made examination into the freight and express rates established by the various state commissions, and find therein the greatest of variation in the percentage that the express rate is given above the first-class freight rate. For instance, in Georgia a merchandise express rate is fixed for a haul of 100 miles of 70 cents, which is 125 per cent of the first-class freight rate of 56 cents, while in Illinois the express rate is 244 per cent of the first-class freight rate (30.8 cents) for the same distance. In Minnesota the percentage of the express rate over the freight rate for a 100-mile haul is 212 per cent; in Iowa, 313 per cent; in Nebraska, 144 per cent; in Kansas, 250 per cent; and in Texas, 159 per cent.

This diversity is not remarkable when we consider the absence of relationship between present express rates and the freight rates. We have before us, for instance, a comparison of first-class freight rates with merchandise express rates out of various cities, and looking over the rates out of Buffalo find that in some instances the express rate is as high as 595 per cent of the first-class freight rate, while to other points in the same general section of destination the percentage over the first-class freight rate runs from 250 to 415 per cent. Out of Chicago the express rates run perhaps more uniformly with relation to freight rates than generally throughout the country, but these variations to typical points of destination stated in percentages run thus: 250, 292, 267, 311, 359, 376, 391, 346, 286, 243, 250, 292, 315, 383, 275, 243, 172; while out of New Orleans the spread between freight and express rates seems to be less uniform and greater on the whole than out of any other city in the country, many of its rates

being 600 per cent above the first-class freight rate; some, however, are as low as 151 per cent.

It may be said roughly that the express rate is generally, when stated on the 100-pound basis, three times as high as the first-class freight rate, although in certain territory, where freight rates are high, express rates are comparatively low, while at other points enjoying low freight rates superinduced by competition of various kinds or by strict regulation, the express rate is on a comparatively high basis. After a close study of freight and express rates it has been quite conclusively established that the latter, as between any two points, can not have any fixed relation to the former, and a scale of rates so made for the United States would be a patch work of incongruities and unjustifiable discriminations.

For these reasons it has not been thought practicable or reasonable to make the express rate a certain percentage of the existing freight rate, although the only guide which the express companies have offered to the Commission as a basis for the making of express rates has been the suggestion that they should be two and one half or three times the first-class freight rate. Under this standard tens of thousands of express rates would be reduced from 50 to 66 $\frac{2}{3}$  per cent, while an equally large number of present freight rates would be increased in like proportion. It may be said broadly that no express company in the United States makes its rates upon such basis.

#### RELATION TO PASSENGER RATES.

It has suggested itself that there might be some relation between the rate of passenger fare and the express rate, inasmuch as express matter and passengers were carried upon the same train. An effort was also made to devise a system of rates that would give chief consideration to this suggestion. The first question that arose naturally was, What relationship should exist between 100 pounds of dead matter carried on a passenger train and an equal weight in living persons? Freight men have testified before this Commission that for many purposes one passenger was regarded as equal to a ton of freight, but this rude measure leads nowhere. Nor can we say that freight, even when moved on a passenger train, should pay the same amount of charge that may properly be imposed upon the passenger, for the single reason that there is no relationship between the carriage of a passenger and the carriage of so much dead freight, even though the car that carries the one is in the same train that carries the other. Value of service, the risk of the railroad company, the care given, and the cost of necessary terminals and stations for both services differ widely. While railroads have sought to develop passenger traffic by the installation of fine equipment, large and convenient



depots, safety appliances, and many special accommodations, no one would urge that these features are necessary to or, at least, were introduced for the accommodation of express matter. In fact, it may be safely said that the railroads have treated the carriage of small parcels as an onerous burden which could not be avoided and from which revenue might be obtained, but to which primary concern should not be given. This is not said by way of criticism, but in explanation of the distinction that must be drawn between the passenger and the express service. The express companies have complained that it was the policy of the railroads to use them largely for taking care of that portion of the railroad business which the railroads themselves did not care to handle, and that when such traffic as the express companies developed grew to large proportions the railroads promptly absorbed it by the establishment of such rates and service as the express companies could not meet. We have, however, given thought to the question of the relation between earnings by passenger train for passengers and for express matter; and while such a basis may not be accepted as in anywise conclusive or determinative of the express rate, the relation between the return for the carriage of passengers and express matter has been borne in mind in the conclusions herein arrived at, especially with relation to the fact that the same speed is given to both passengers and express and the rates for passenger service do not decline with distance in the same proportion as do freight rates.

#### THE SCALE OF GRADUATED CHARGES.

No one thing has been so fruitful a cause of complaint and criticism throughout this investigation as the so-called scale of graduated charges. This is a scale by which is determined the rate that shall be applied to a package of a given weight. The express company fixes the rate between two points upon a 100-pound basis. Having ascertained this 100-pound rate, one turns to the graduated scale to see the rate applicable under that rate per 100 pounds upon a package of less weight. To illustrate, the rate between New York and Chicago is found from the tariffs to be \$2.50 per 100 pounds. The shipper having a shipment of 10 pounds turns to the graduated scale, where under the heading of \$2.50 per 100 pounds he finds a statement of the rates applicable upon packages of various weights, and running down this column to 10 pounds he finds that the rate for 10 pounds under the \$2.50 rate is not, as he might surmise, approximately one-tenth of the \$2.50, or a little more, but is 75 cents. The rate under the same scale for 5 pounds is 60 cents, and for 30 pounds \$1.15.

This scale is unreasonable, discriminatory, and arbitrary. It is the product of years of shrewd manipulation, and has no justification



in the minds of the express men themselves. It is the richest example yet brought to our attention of a tariff based exclusively upon the theory that the charge should be what the traffic will bear.

Under this scale there is no determinable relation between the rates fixed for the carriage of parcels of different weights. The amount added to the proportionate pound rate to make up the package charge under the graduated scale varies from 2 cents per package to 78 cents per package, according to the weight of the package and the 100-pound rate under which it moves. For example, between two points where the rate is \$7 per 100 pounds an 11-pound package is charged for at \$1.50. The proportionate pound rate is 77 cents. Therefore the addition to that rate to make up the package charge is 73 cents. Where the rate is \$1.50, an 11-pound package is charged for at 60 cents, which is  $43\frac{1}{2}$  cents in addition to the proportionate pound rate. Where the rate is \$1 per 100 pounds, the charge for an 11-pound package is 45 cents, the addition to the pound rate being 34 cents. Where the rate is \$13.50, the package charge is \$1.65, which is  $16\frac{1}{2}$  cents in addition to the pound rate.

The effect of this scale is to impose an unjustifiable burden upon the small package and thereby destroy the usefulness of the express company in filling the function for which it was provided, in that it discourages the movement of small packages and tends to erect the express company into a competitor with the railroad as a carrier of large shipments. No one can analyze these tables, some of which may be found in the appendix hereto, and arrive at any other conclusion than that they are the product of a cunning effort to impose upon the general public by the exaction of exorbitant charges for those small packages which the mail can not carry and the railroad does not wish to carry.

An interesting side light is thrown upon this whole matter of the rate applicable to small packages by the most cursory glance at the rates charged in England for similar service, from which it appears that where the rate per 100 pounds in England is \$1 and the rate in the United States is likewise \$1, the English charge for the carriage of a 10-pound package at carrier's risk is 16 cents, while in the United States it is 45 cents, and for a 20-pound package it is 22 cents in England and 50 cents in the United States.

We have found by most extensive examination of express records that approximately one-half of the express business consists of packages under 20 pounds in weight; and the average shipment, including carloads of horses and of fruit and vegetables, is but 34 pounds. These figures clearly indicate the use made of the express company; and, trafficking upon this use, the graduated scale has been so made as to impose a cruel burden upon the smaller parcels.

If proof of this is needed, examination should be had into the growth of the graduated charges since 1885. It appears, for instance, that under the 50-cent per 100-pound scale in 1887 the charge was 25 cents for a 6-pound package; in 1912 the charge is 30 cents. Under the 60-cent scale the charge was 25 cents; to-day it is 35 cents. Under the \$1 scale the charge was 30 cents; it is now 40 cents. Under the \$1.10 scale the charge was 35 cents; it is now 45 cents. Under the \$1.50 scale it was then 40 cents; it is now 50 cents. Under the \$2 scale it was 50 cents; it is now 60 cents. Under the \$3 scale the rate has jumped from 60 cents to 75 cents, and so on. When it is recalled that the average package carried under 11 pounds weighs approximately 5 pounds, the magnitude of such increase, and the reason for it, may be appreciated. And this is emphasized when we have in mind the fact that an increase of 5 cents upon each package carried by the express companies of the United States would yield but little less than \$15,000,000. Without raising their standard 100-pound rates the express companies by a change in their graduated scale have increased their annual charges by millions of dollars.

#### BLANKET RATES.

An effort was made to construct a tariff of rates upon packages that would blanket the country after the fashion of the postage stamp. But these objections appeared: A rate on 10 pounds for a 10-mile haul would be so low as to be absurd for a 3,000-mile haul. And if the 10-pound rate were made an average of the reasonable rates for both long and short hauls the inevitable result would be to raise many of the short-haul rates most frequently used by shippers. To meet this condition a further effort was made to divide the country into three great zones of a thousand miles in width within and between which low small-parcel rates would be given. The first difficulty that here presented itself was in the stating of the rates from and to each point in the United States, for this would manifestly necessitate the measuring of the distance from each of the 35,000 express offices to every one of the other stations. This meant nothing more than a certain amount of labor and was not regarded as insuperable, especially in view of the block system devised herein for the stating of rates. But it appeared that if small-parcel rates were made upon this basis the whole scale of rates would have to be brought down to this level, else by the shipment of 10 packages of 10 pounds each the rate on 100 pounds could be controlled.

The average distance which a package of any size is now hauled by the express company is about 200 miles, and the average rate paid is 50 cents. As we know that the greater volume of express traffic is done for short distances and that one-half the business moved is of packages under 20 pounds in weight, it has been suggested that no



loss would follow by the establishment of a rate of 50 cents for the carriage of a 20-pound package for a very broad zone. This, however, would be an unreasonable rate for the shorter distances and for the smaller packages, and its imposition would probably be justifiably resisted by the shipping public. And if 50 cents were fixed as the charge for the hauling of a 20-pound package for, let us say, a thousand miles, it would necessarily follow that \$2.50 would be the maximum rate for the carriage of 100 pounds for the same distance. There is but one section of this country, namely, that known as official classification territory, in which we have thought such a rate to be approximately reasonable.

But there is a broader view to take of this matter, one of public policy and of a wise, far-sighted railroad and express policy. It would doubtless greatly stimulate express traffic if rates were made on a flat basis per package for a broad sweep of territory, and a low rate for the longer hauls would find its compensating and complementary advantages to the carriers in the greater volume of the business and the ease and saving in many directions with which it could be conducted. This, however, is a matter as to which we are not free to substitute our own judgment as to policy for that of the carriers themselves. We may not order such an experiment to be made, even if we thought it would in time prove a profitable one to the carriers and gratifying to the public.

#### ZONE SYSTEM OF MAKING RATES.

We have therefore felt that it was necessary for us to recognize the variation in the density of traffic and of population and in the expense of operating railroads in the different sections of the country. With this in mind as a basis for the formation of rates, the country has been divided into five grand subdivisions. These subdivisions conform generally to those recognized by the rail carriers and which this Commission has in the consideration of freight rates been led to believe were based upon actual differences in operating and traffic conditions. These subdivisions may be seen by reference to the map heretofore referred to, Zone I, as it is called, being the territory north of the Ohio and the Potomac and east of the Mississippi, in which there generally obtains a lower grade of freight rates and passenger rates and express rates than elsewhere throughout the United States, and in which the population is most dense and traffic most abundant. Below this zone lies Zone II. To the west of the Mississippi lies Zone III, which generally takes slightly higher rates than the southern territory. This zone also includes the peninsula of Michigan, as well as a portion of Wisconsin, because the conditions in these territories more nearly meet those immediately west of the Mississippi



River than the conditions obtaining in the territory immediately adjacent in Zone I. To the west of Zone III, which extends as far as Denver, lies the great intermountain country, which as yet is but sparsely populated and as to which rates distinctly higher than rates obtaining in any of the eastern territories should be made. The belt of states running along the Pacific coast has been set apart as Zone V, conditions therein being different from those found in any of the other zones, their population being more dense and their conditions of transportation, all things considered, less expensive than in the zone immediately to the east.

#### THE STANDARD OF RATES.

What then may be said to be the standard of a reasonable express rate? Our answer is, No one consideration. These conclusions, however, we have reached:

1. That express rates should be made primarily to meet the need of the great body of our people and should therefore be stated in terms that represent the small packages which the express company is intended to carry rather than by the 100 pounds as freight rates are stated.

2. That in the fixing of its rates an express company should not be allowed to charge more than a railroad company if the latter undertook to, and did, give the same service.

3. That it is proper for the government to treat the express company as a freight forwarder by passenger train, giving supplemental service at each terminus, and intermediate care.

4. That an express rate may not be based upon the monopoly right of the express company to be the exclusive freight forwarder over one or more lines of railroad.

5. That the rate should not include more than a reasonable compensation for the service given, even though such compensation falls below that which the railroad exacts as a minimum for the carriage of 100 pounds of freight.

6. That it is unreasonable to fix as rapid a decline in express rates for long distances as is made by the railroads in their freight rates, express service in this respect being more analogous to passenger than to freight service.

7. That in compounding the express rate the railroad should be allowed a compensation for bulked freight moved upon a passenger train as to which it is relieved by contract from all liability for loss or damage and is without expense for the furnishing of a receipt, the billing, the bookkeeping, and a great number of other general expenses.

8. That the rate should include a return to the express company which will compensate it with profit for the expense of the service

which it gives, there being added thereto in the formation of the total rate the proper charge which it may reasonably make for the service which the railroad gives, as stated in the preceding paragraph.

#### IN CONCLUSION.

This investigation has been conducted with the primary purpose of making clear to the companies themselves and to the Commission the express situation as it exists, the validity of the complaints made, and their seriousness. Our hope has been that with a comprehensive view of the field remedies might be found for wrong conditions. It has been an event of real awakening to these carriers, and our effort has been to cooperate with them in the installation of a new constructive policy. They have been made conscious, not only of their duties as public servants of the highest order, but likewise of the possibilities of the elaborate machinery they have devised. There is no doubt but that the express company can expand by the utilization of its organization into a still more useful agency than it is to-day by providing a terminal service on freight shipments, making a rate from the house to the house, thus utilizing their wagon service and the freight service of the railroads under their published tariffs. No reason can be given why this country should not enjoy the kind of service which England has, rail service plus local delivery upon less-than-carload traffic. Furthermore there can be effected a combination of freight and express service which would give a lower rate than the express rate and make faster time than the freight service. Here are fields of activity which are not now cultivated and in which the express carriers may find room for the play of their constructive faculties after they have more perfectly developed, systematized, and synchronized their present functions as quick and safe carriers of small parcels.

The test of the express company as a public utility is at hand. Certainly it is not deniable that the express company has to no slight degree lost the confidence of the people it serves and is regarded now as only upon probation. To help it to a greater degree of usefulness and to preserve it as a public agency we have conducted this inquiry, reaching as it has down to the most elemental practices of the carriers and broadening into a sea of infinite detail. It has not been deemed wise to fill this report with the complaints that have come to us. Some of these were beyond our power to reach by order; some involved no more than the shortcomings of a local agent. The great mass of criticism, however, went to the heart of real delinquencies in the service given or the rules or rates of the carriers, and have in a broad way been dealt with herein. It is not to be expected that even with an inquiry as extended as this



there will result a cure for all these ills. But these things we shall require:

(1) A new and simple method of stating rates by which one who is not an expert in the reading of tariffs may know what rate he should be charged.

(2) The tariffs must present but one rate upon the same class of traffic between any two points in the United States served by the same carrier. The rebates by indirection concealed in the tariffs must be removed.

(3) There must be a new classification of traffic in which the standard or first-class rate shall be that on merchandise, and to which there shall be one great class of exceptions—a second class as it were—consisting of articles of food and drink now carried under the meaningless term of “general specials.” The rate for this latter class should bear a relation in percentage to the former. Our conclusion is that 75 per cent of merchandise would yield a fair and reasonable rate. Other rates may be made to meet traffic needs and develop industry, but all such rates shall be based on conditions of service and should, for convenience, likewise be stated in percentage of the merchandise scale.

(4) The rules of the express companies are too many and too involved. They need even more drastic revision than is herein suggested.

(5) The express carriers must unite in direct through routes, reaching all cities and towns accessible to each other by the shortest route measured in time. The Commission will leave this matter in the hands of the carriers for the present, but will undertake to see that this principle is recognized in the routing of express traffic.

(6) There should be a precise statement published and filed showing the terminal service that is given at local stations.

(7) To avoid prosecutions for illegal overcharges it is essential that double collections shall cease, and to this end a system of labels is herein prescribed: A yellow label, which shows that the charges have been paid; a white label when the charges have not been paid; and if no label is carried on the package it must be delivered without charges and the error later corrected.

(8) The standard merchandise rates have been found to be discriminatory as between localities and unreasonable in themselves with respect to the points dealt with in our order. They have been the product of an unregulated growth, in which certain of the larger cities have gained an undue advantage and preference. A burden that is excessive and unjustifiable has rested upon the packages of smaller weight which the express carrier was especially created to transport. The railroad company in “farming out” this branch of its service upon a percentage contract basis has created an inevitable



tendency to increase parcel rates. There has been no uniformity in the application of any system or basis or scale of rates with reference to points similarly situated even within the same territory, and no reasonable relation is suggested in the rates fixed between the service given by the railroad in the carriage of a parcel and that given by the express company in its terminal service.

For the correction of these evils there has appeared to be but one remedy, the construction of a rate system that should cover the United States. This has been a task of unprecedented magnitude and difficulty. We have sought for all possible light upon this subject both in Europe and in America and have arrived at conclusions which are set forth in our order as to what just, reasonable, and non-discriminatory rates would be. Our effort has been to make certain that ample compensation shall be allowed upon a reasonable basis for the full service given; to the railroad for its passenger-train movement, and to the express company for all that it does both for the railroad and for the shipper. We have not attempted to segregate the amount that should go to each, however, the public being primarily interested in the gross charge which the express carrier makes. There being no uniformity in rates now, it has become necessary to increase some rates under the tariff here presented. These increases, however, affect almost exclusively the rates on packages of the higher weights.

In order that the shippers and the carriers may have abundant opportunity to analyze these rates and present their views to the Commission before they go into effect, the order made at this time will require the carriers to show cause on October 9, 1912, why the proposed rates should not be put into effect.

## APPENDIX—IN RE EXPRESS RATES.

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### SECTION I.

Herein will be found an analysis and statement of some of the facts and figures gathered during the course of this investigation from the statements made by the express companies themselves in response to the inquiries of the Commission, from their annual reports to the Commission, their contracts with the railroad companies, which are on file with the Commission, and the exhibits introduced.

#### INTERCORPORATE RELATIONSHIPS.

In the above heading the term "intercorporate relationships" is used in its broad sense, as in this attempt to trace the mutuality of interests between different express companies and also between the express companies and railroad companies not only the holding of stock by one company in another will be considered, but also the officers and directors common to two or more companies will be mentioned.

In what follows it is the endeavor to show the relationship which exists between railway and express companies and between the several express companies themselves. The system of interlocking directors and the mutuality of stock holding interests is shown, and it may fairly be said that the study shows conclusively that every express company herein named is closely related to, if not absolutely dominated by, railway interests. The peculiar significance of the control being thus held is shown in the pages devoted to analyses of contracts between railroad and express companies.

Of the companies under consideration the Adams, American, National, and United States express companies are joint stock associations; the remainder are corporations. The boards of directors of the four named companies are self-perpetuating bodies, and being in control it would prove a very difficult matter for shareholders to remove them. The articles of association of the Adams Express Company provide that upon the written request of holders of one-third of the shares a meeting shall be called by the board of managers, who act as directors. At any meeting it shall be lawful to remove the managers or any other official and to appoint others in their place, but the concurrence of the holders of two-thirds of the shares issued

shall be necessary to any such removal. There has never been a meeting of shareholders for the election of managers (directors). In the case of the American Express Company, the articles of merger and association provide that when shareholders owning a majority of the shares shall request it in writing meetings of shareholders for the election of directors shall be held. Reports received from that company indicate that no such meeting has been held. It requires a written request from shareholders owning two-thirds of the shares of the United States Express Company to hold a meeting of shareholders for the election of directors. No such meeting has been held since 1862.

The railroads, apparently dominating as they do all the express companies either through stock ownership or through interlocking directors, have the express companies absolutely helpless whenever the latter desire to renew an expired contract or to make a new one. The result may readily be seen when the contracts between the companies which are now effective are compared with those made 30 years ago. Such a comparison will show that the important railroads now receive an increased remuneration of about  $37\frac{1}{2}$  per cent, due to an increase in basis of payment in addition to sharing in the receipts from an enormously increased volume of business.

The roads are sellers and the express companies are buyers of transportation, which they must obtain or cease business. As in other lines of business where necessities are sold, the seller has constantly increased his price, and the express companies, being the middleman, in order to obtain its profit must pass the amount on to the public.

As illustrating the method by which control of the express companies, which are joint-stock associations, may be perpetuated the following extract from article 4 of the articles of association of the Adams Express Company as amended in 1898 appears pertinent:

Any person, corporation, or association entitled to any shares may transfer his or their interest in whole or in part \* \* \* to any person, corporation, or association approved by not less than two of the managers. \* \* \* In case, upon the proposed sale and transfer of any share or shares, no two of the managers shall approve of the vendee becoming the owner of such shares, the owner of such shares may have the value thereof assessed by the president and secretary and treasurer of the association, under oath to assess the same at its true cash value at that time, and the value agreed upon by any two of said assessors shall be deemed the true value for that purpose. And thereupon the owner of such shares may offer the same to the managers at such assessed value, who shall be obliged to purchase the same at such price on behalf of the association, and pay for the same within ten days after such offer, or admit the vendee so as aforesaid proposed by such owners.

Articles 6 and 7 of the articles of association and by-laws of the American Express Company read in part as follows:

Article 6. The interest of the shareholders in this company shall be represented by proper certificates, in which shall be specified the number of shares to which the



holder thereof is entitled. \* \* \* They shall also specify the date of the organization of this company and the term of its duration, and also that the transfer of said share or shares, or the interest thereby represented, may be objected to by the board of directors of this company, in which case the same shall be purchased at its real value, to be determined as hereinafter mentioned, for the benefit of this company.

Article 7. The shares of this company shall be assignable in the usual form \* \* \* subject to the conditions herein contained. \* \* \* In case any share or interest in this company shall be assigned or transferred by operation of law, or in case the transfer of any share or shares shall be objected to by the directors, then, and in such case, the board of directors shall have the right to purchase and take for the use and benefit of this company the interest and shares so assigned or transferred, or the transfer of which shall have been objected to, by paying to the person owning or representing such shares or interest the actual market value thereof, and if the said value can not be agreed upon by the said board and the person owning or representing such interest or shares, then the value thereof shall be determined and fixed by three disinterested persons, one to be chosen by the board of directors, and one by the person or persons owning such shares, and the third by the two persons so chosen, and in case of disagreement among said appraisers, the decision of two of the persons so chosen shall be binding upon all the parties. In case said board of directors shall refuse to purchase and pay for said shares the value thereof so fixed and determined, said proposed sale thereof may be made by the holder thereof, and the transfer thereof shall be properly entered upon the transfer book.

Whether or not the express companies observe the rules quoted can not now be stated, but, obviously, if they do live up to them, it would be impossible for any person or company not satisfactory to the directors to obtain possession of any of their shares.

#### ADAMS EXPRESS COMPANY; CAPITAL STOCK, 120,000 SHARES.

This company was organized in 1854 as a joint-stock association or partnership, the ownership being represented by shares of stock, 12,000 of which were issued. The original associates in the business were 17 in number and owned 10,769 shares; the remaining 1,231 shares were the property of the association and could be disposed of as the managers (directors) saw fit. The company was reorganized in 1866, at which time the partners issued to themselves 100,000 shares or interests. There is no evidence presented that any money was paid for the additional shares. At the time of the reorganization the assets of the company were \$3,686,526.55, consisting of real property, equipment, bonds and stocks, other securities, and cash. Assuming that the assets as stated were clear—that is, with no offsetting liability against them—the actual value of each share at the time of reorganization was \$36.86. It is significant to note that for the year ending June 30, 1867, dividends of \$5 per share were paid. It thus appears that when the number of shares was increased from 12,000 to 100,000, the shareholders received a stock dividend of 733 per cent, and that dividends of 13 per cent on the actual value of the shares at the time of reorganization were paid on the increased number of shares in the following year.

The yearly dividends paid on the increased number of shares between 1867 and 1875 were 2 of \$5 per share, 1 of \$4, and 4 of \$8. In 1869 no dividend was paid. In January, 1875, another stock dividend of 20,000 shares was distributed, increasing the number of shares to 120,000, where it still remains. Dividends at the rate of \$8 per share on the increased number of shares were paid in 1875 and each subsequent year until 1899, when the dividend was reduced to \$4 for that and the succeeding year. In 1901 and 1902 the dividend was raised to \$8 and in 1903 to \$10, where it remained until 1908, being reduced to \$8 in that year. In 1909 \$10 was paid, and in 1910 and 1911 dividends of \$12 per share were paid. In addition to regular dividends as above stated, in 1898 the company issued and distributed among its shareholders 4 per cent collateral trust bonds to the amount of \$12,000,000, equivalent to \$100 for each share of stock. Again, in June, 1907, the company issued and distributed to shareholders 4 per cent collateral trust bonds to the amount of \$24,000,000, equivalent to \$200 for each share of stock.

Under the terms of the deeds of trust the express company may withdraw any of the securities deposited as collateral to secure the payment of its bonds and substitute others of equal value, and on June 30, 1911, it had among the securities so deposited bonds of its own issues to the amount of \$15,257,900. In case the interest on the pledged securities shall be insufficient to pay the interest on the bonds, the express company must pay the deficiency, but if in excess of the bond interest the express company receives it. The practical effect of the bond issues is that the express company distributed the \$36,000,000 as dividends and is now paying interest on the dividends thus distributed.

The following extract from the Adams Express Company's reply to a question contained in the Commission's order of October 16, 1911, shows that, in addition to the cash and stock and bond dividends before described, it has accumulated all the assets which it now has out of earnings and profits:

On May 1, 1866, the tangible assets of the company were of the value of \$3,686,526.55. It has continuously since that time been engaged in the express business and has from time to time loaned out at interest and invested and reinvested its surplus funds. All of the assets which it now has and all of the property and equipment which it has purchased since said date were, and have been, purchased out of the earnings and profits.



The managers (directors) of this company and the number of shares of stock owned by each as of June 30, 1911, were as follows:

Name.	Number of shares.
William M. Barrett.....	519
William H. Damsel.....	Less than 50
Charles Steele.....	110
Basil W. Rowe.....	Less than 50
George F. Baker.....	Less than 50
William D. Guthrie.....	Less than 50
Joseph Zimmerman.....	Less than 50

From the above table it is apparent that the control of this company rests in the hands of a board of managers who own less than 1 per cent of the shares. As stated elsewhere this board is a self-perpetuating body and it would require the action of holders of two-thirds of the outstanding shares to remove any member of it. Of the persons above named, Mr. Barrett is president of the company; Mr. Damsel is vice president; Mr. Guthrie is a member of the firm of Guthrie, Bangs & Van Sinderen, which firm is general counsel for the company, and Mr. Zimmerman is general manager of the New York department of the company in charge of traffic. Mr. Steele is a director in 17 railway companies. Mr. Baker is director in 25 railway companies, in the New England Navigation Company, and in the American Telephone & Telegraph Company. Of the companies in which Mr. Baker is a director the Adams Express Company conducts operations over the following: Chicago, Burlington & Quincy Railroad; Colorado & Southern Railway Company; New England Navigation Company; New York, New Haven & Hartford Railroad Company.

The highest percentage paid by the express company is paid to two of the lines in which Mr. Baker is a director, *i. e.*, 57½ per cent to the Chicago, Burlington & Quincy Railroad, and the same percentage to the Colorado & Southern Railway.

This company owned stocks of common carriers to the par value of \$14,580,175, and bonds of similar companies of a par value of \$33,123,125, a part of which is pledged as security for bonds issued by the Adams Express Company as dividends.

Among the stocks held are \$918,000 in the Chicago, Milwaukee & St. Paul Railway; \$3,723,000 in the New York, New Haven & Hartford Railroad; and \$4,016,950 in Pennsylvania Railroad. It also owned 19,160 shares of its own stock, \$100,000 in the American Express Company, and \$650,000 in the Southern Express Company,



as well as the entire capital stock of a number of small express companies such as the New York & Boston Despatch.

In connection with stock holdings in railway companies by express companies it may be pointed out that the American Express Company as well as the Adams Express Company is a large holder of New York, New Haven & Hartford stock, it owning \$5,132,400 of the shares of that company, making the combined holdings of the two express companies \$8,855,400.

The largest stockholders of the Adams Express Company as of June 30, 1911, were as follows:

Name.	Number of shares.
Adams Express Company.....	19,160
Estate of Levi C. Weir.....	6,429
Southern Express Company.....	1,183
William B. Dinsmore.....	1,133
Madelaine I. Dinsmore.....	1,100
Anna C. Rumrill.....	1,075
Johnston Livingston.....	1,000
Ida C. Potts.....	900
Ætna Life Insurance Company.....	800
Estate of Jas. M. Thompson.....	800
Helen G. Huntington.....	733
J. Sanford Saltus.....	601
Total.....	34,914

The 12 names above represent the ownership of 29 per cent of the entire capital stock. The remaining 2,956 stockholders owned an average of 29 shares each.

From the foregoing table it will be observed that the Adams Express Company is the largest holder of its own shares and that the Southern Express Company is the third largest holder. Levi C. Weir, whose estate is the second largest owner of shares, was, at the time of his death in 1910, chairman of the board of managers and also a director in several railway companies. Johnston Livingston, until his death in 1911 president of the National Express Company, was the seventh largest holder of Adams Express Company's stock, and the following quotation from the Articles of Association of that company appears pertinent:

It is hereby expressly agreed by and between the respective parties aforesaid that neither of said parties shall either directly or indirectly establish or be engaged or interested in establishing any express or line of expresses to run in conflict or opposition to the lines of express owned by this association.

The agreement from which the quotation is made was signed by Mr. Livingston on the 1st day of July, 1854, but, as stated, he was

until his death interested in both the American and National Express companies as well as in the Adams Express Company, and had been for a number of years. Whether or not it was deemed that the American and National Express companies were run in conflict or opposition to the Adams Express Company can not be stated, but it is a fact that Mr. Livingston was a director of the consolidated American Express Company when the merger between the American Express Company and the Merchants' Union Express Company became effective as of November 25, 1868.

The Morgan interests are represented in the Adams Express Company in the person of Charles Steele and through stock ownership in the New York Central Railroad and other lines are also closely related to the American Express Company.

The names of William B. Dinsmore and Madelaine I. Dinsmore are also among those of the largest holders of the stock of the Southern Express Company.

#### AMERICAN EXPRESS COMPANY; CAPITAL STOCK, 180,000 SHARES.

On June 30, 1911, this company owned bonds of common carriers of the par value of \$4,995,500, and stocks of similar companies to the amount of \$12,922,100. Its largest single stock holding was in the New York, New Haven & Hartford Railroad, \$5,132,400; followed by Wells, Fargo & Company, \$4,590,000; New York Central, \$1,000,000; the Chicago & North Western Railroad, \$875,000; Union Pacific, \$500,000; National Express Company, \$484,700; and Kansas City, Mexico & Orient Railroad, \$190,000. Its largest bond holding was in the New York Central, and its closely related lines, such as the Lake Shore and the Michigan Central, \$1,550,000, and it also owned bonds of the Chicago & North Western Railroad of a par value of \$1,172,000. Of the lines above named, the express company operates over the following:

Chicago & North Western; Kansas City, Mexico & Orient; New York Central; New York, New Haven & Hartford (part); Union Pacific.

It seems fair to assume a mutuality of interest between an express company and the lines over which it operates when either of the companies owns securities of the other. This inference is strongly confirmed by an examination of the contracts between railroad and express companies, which frequently provide that each company shall work for the other's interest.

The directors of the American Express Company and the number of shares of stock owned by each on June 30, 1911, were as follows:

Name.	Number of shares.
James C. Fargo.....	230
Lewis C. Ledyard.....	140
F. F. Flagg.....	200
W. H. Seward.....	300
Cornelius Vanderbilt.....	200
C. M. Pratt.....	200
J. H. Harding.....	100
J. H. Bradley.....	100
Total.....	1,470

The above names represent about eight-tenths of one per cent of the entire number of shares.

Of the persons above named Mr. Fargo was president; Mr. Ledyard, vice president; Mr. Flagg, vice president; Mr. Seward, secretary; and Mr. Bradley, vice president and general traffic manager of the company. Mr. Fargo was a director of the Chicago & North Western Railway; Mr. Ledyard was a director of the New York Central & Hudson River Railroad and its affiliated companies, of the New York, New Haven & Hartford Railroad, and of the Northern Pacific Railway Company; Mr. Vanderbilt was a director of the Delaware & Hudson, Illinois Central, and Missouri Pacific; Mr. Pratt, of the Long Island Railroad, New England Navigation Company, and New York, New Haven & Hartford. In this connection it may be pointed out that contracts calling for an increased percentage to be paid by the express company were entered into between the American Express Company and the New York Central and its affiliated lines six months prior to the expiration of the then existing contracts, and that payments under the new contracts began at that time, thus giving the railways the benefit of the increased percentage six months earlier than they were entitled to receive it under the terms of contracts which had been in effect for several years. Attention is also called to the increased percentage paid the Chicago & North Western Railway under the terms of a contract which became effective in April, 1911. It thus appears that directors of express companies may and do make contracts with themselves as directors of railway companies and that in the great majority of cases when a contract expires it is renewed either with the same or another express company at an increased percentage.



The twelve largest holders of the American Express Company's stock on June 30, 1911, were as follows:

Name.	Number of shares.
New York Central & Hudson River Railroad.....	30,000
Charles Pratt & Company.....	4,400
American Express Company.....	3,399
Executors of B. P. Cheney estate.....	1,690
P. J. Goodhart & Company.....	1,035
Southern Express Company.....	1,185
Homans & Company.....	1,046
Standard Trust Company (trustees for benefit Adams Express Company).....	1,000
Graham F. Blandy.....	1,000
Charles P. Noyes.....	1,000
David Lehman.....	855
William K. Porter.....	700
Total.....	47,910

The above names represent about 27 per cent of the entire capital stock. The total number of shareholders on June 30, 1911, was 3,900, of which 827 owned 50 shares and over. The remainder, numbering 3,073, owned 41,339 shares, an average of 13 shares each.

Among the list of shareholders is found the name of Johnston Livingston, late president of the National Express Company (which is owned by the American Express Company) whose name also appears among the large holders of Adams Express Company's shares (1,000). Other holders of both American and Adams shares are Post & Flagg and Ida C. Potts. The latter also owns shares in the United States Express Company and in Wells Fargo & Company.

It is found that the Adams Express Company is among the largest shareholders of its principal competitor; that the Southern Express Company, which is closely affiliated with the Adams, also owns a large number of shares in the American Express Company; that the New York Central & Hudson River Railroad owns one-sixth of the entire number of shares of the express company; that four of the directors are also directors in railway lines; that two of the directors are closely connected with the New York Central Lines; that two of the trustees of the Cheney Estate (the fourth largest owner of the express company's shares) are directors in railway lines; that one of the directors (J. Horace Harding) is a member of the firm of C. D. Barney & Company, whose name appears among the shareholders of the Adams Express Company; that the Adams and American Express Companies are represented in all hearings before the Interstate Commerce Commission and similar regulative bodies by the same attorney who looks after the interests of both companies, and

that the Morgan and Standard Oil interests are strongly represented in the directorate, the latter in the person of Mr. C. M. Pratt. It is a well-known fact that the Adams and American companies formerly had common directors. The three directors who are not above mentioned are employees of the express company.

**GLOBE EXPRESS COMPANY; CAPITAL STOCK, 30,007 SHARES.**

The entire capital stock of this company was issued to the Denver & Rio Grande Railroad Company and the Rio Grande Western Railway Company in consideration of cash, equipment, and franchises owned or controlled by the Denver & Rio Grande Railroad. Cash to the amount of \$25,485 and equipment valued at \$50,000 was received in exchange for the stock, making the tangible assets of the express company \$75,485. Up to and including the fiscal year ending June 30, 1911, dividends amounting to \$1,545,360 had been paid as a result of operations for seven years and nine months.

As of June 30, 1911, this company owned bonds of the Denver & Rio Grande Railroad to the amount of \$16,500, and of the Rio Grande Western Railway to the amount of \$100,000. It had also acquired other bonds of the par value of \$50,000.

The directors of the company on June 30, 1911, were as follows:

George J. Gould, E. T. Jeffery, C. H. Schlacks, J. F. Vaile, Jesse White, J. W. Gilluly, J. B. Andrews.

All of the capital stock of the company was owned by the Denver & Rio Grande Railroad Company, one share each standing in the name of the several directors, all of whom are officers or directors of the railroad company. Mr. Gould is the head of the Gould system of railroads and Mr. Jeffery is associated with him in various roads comprised within the Gould lines.

**GREAT NORTHERN EXPRESS COMPANY; CAPITAL STOCK, 10,000 SHARES.**

This company issued as of February 24, 1892, 1,000 shares of stock for which it reports \$100,000 was realized. The incorporators were as follows:

Name.	Number of shares.
James J. Hill.....	980
Edward Sawyer.....	5
Samuel Hill.....	5
W. J. Footner.....	5
M. D. Grover.....	5

As of October 20, 1899, the company authorized the issuance of 9,000 additional shares, to be turned over to the Great Northern



Railway Company in consideration of an extension of contract between the railway and the express company for a period of 25 years. On the same day the stock received from the express company by the railway company was transferred by the latter company to the Lake Superior Company, Limited, to be held in trust for the benefit of the stockholders of the railway company.

Under the terms of the contract between the railway and the express company, the express company agreed to pay 40 per cent of receipts from operations over the railway's lines, and the contract, in consideration of which 9,000 shares of the express company's stock was issued, would have expired October 20, 1924. Effective July 1, 1910, another contract was entered into by the express company by which it agreed to pay the Great Northern Railway Company 60 per cent of gross receipts from operations over its lines. It thus appears that 14 years before the expiration of the contract between the two companies the express company increased its percentage of payment from 40 per cent to 60 per cent, and the stock which was issued in consideration of the long-term contract still remains in the possession of the railway company. The effect of this increase may be clearly seen when it is stated that the increased compensation to the Great Northern Railway Company amounted to \$492,256 for the year ending June 30, 1911. This results, of course, in the express company showing a very considerable decrease in the net results from operation when compared with those results for previous years.

Since 1892 this company has disbursed in dividends \$4,400,000 and, in addition, has paid for \$185,000 worth of property from its earnings. Another matter to which attention may be called is the fact that the express company entered into a contract with the Chicago, Burlington & Quincy Railroad, also a Hill line, by which it agreed to pay the railroad company 70 per cent of receipts from express matter transported between Chicago and St. Paul. This contract became effective as of January 1, 1911.

As of June 30, 1911, the directors of this company were:

L. W. Hill, R. A. Jackson, J. M. Gruber, W. W. Broughton, D. S. Elliott.

All of the above-named were officials of the Great Northern Railway Company, with the exception of Mr. Elliott, who was president of the express company.

#### NATIONAL EXPRESS COMPANY; CAPITAL STOCK, 5,000 SHARES.

This company is a joint-stock company organized by the American Express Company, which now owns 97 per cent of the capital stock.

The directors of the National Express Company, as of June 30, 1911, were as follows:

Lewis Cass Ledyard, Jas. C. Fargo, F. F. Flagg, Wm. C. Fargo.



All of the above-named were officers of the American Express Company.

The following quotation from its annual report will make clear the situation with respect to the operations of this company:

The National Express Company is an unincorporated association organized by the American Express Company, with a nominal capital of \$500,000, of which \$475,000 was issued in the inception to the American Express Company, the remaining \$25,000 being subscribed for at par by directors and others connected with the American Express Company under an agreement under which the American Express Company had a right to take over their shares at any time at actual cost. The only express business which it operates for its own account is the express business on the Delaware & Hudson Company; Greenwich & Johnsonville Railway; Grand Trunk Railway, between Rouses Point and Montreal and between Moors Junction and Montreal; Keeseville, Ausable Chasm & Lake Champlain Railroad; Middleburg & Schoharie Railroad; Hudson Navigation Company (Peoples Line steamers), between New York and Albany; and Schoharie Valley Railroad. All the rest of the business carried on by said company being actually carried on by it as agent of the American Express Company and for its account. All the property which it received upon its organization it received from the American Express Company in consideration of the issue of its stock to that company, excepting the cash contribution of \$25,000 above mentioned, from individual stockholders. Since the formation of this company the American Express Company has, in one or two instances, upon the death of the individual stockholders, acquired their stock at cost under the option above mentioned.

#### NORTHERN EXPRESS COMPANY; CAPITAL STOCK, 50,000 SHARES.

No cash was realized from the issuance of shares, the entire issue being given in consideration of a contract between the Northern Pacific Railway and the Northern Pacific Express Company, giving exclusive rights for 50 years, assigned to this company. The Northern Pacific Express Company, which formerly operated over the lines of the Northern Pacific Railway, is now a holding company, controlling the Northern Express Company, and its stock is owned by the Northern Pacific Railway Company. The situation now is, that the Northern Pacific Railway Company owns the Northern Pacific Express Company, which, in turn, owns the Northern Express Company.

For the fiscal years ending June 30, 1907, to 1911, inclusive, this company has paid dividends aggregating \$2,400,000 and, in addition, has accumulated equipment to the amount of \$218,500 from the earnings from operations. It is the owner of stocks of the Northern Pacific Railway Company of the par value of \$40,000, and of the Colorado & Southern Railway of the par value of \$200,000. It also owns bonds of common carriers to the par value of \$733,000 and other bonds of a par value of \$50,000. Inasmuch as no cash was realized from the issuance of this company's capital stock the inference is clear that not only dividends of \$2,400,000 and equipment amounting to \$218,500, but investments in stocks and bonds of the par value of \$1,023,000, a total of \$3,641,500 have been accumulated

from the operations of this company in the period of five years, in addition to which payments of 50 per cent of gross receipts have been made to the Northern Pacific Railway and other lines over which it operated. The payments for "express privileges" to the Northern Pacific Railway for four years, ending June 30, 1911, have been as follows:

Year.	Amount.
1908.....	\$1,280,619
1909.....	1,434,877
1910.....	1,572,284
1911.....	1,395,856
Total.....	5,683,636

In February, 1911, this company entered into a contract with the Chicago, Burlington & Quincy Railroad under the terms of which the express company agreed to pay the railroad company 70 per cent of gross receipts from express matter transported between Chicago and St. Paul. The point to be especially observed is that this very large percentage is paid by an express company owned by the Hill interests to a railroad owned by those interests. So far as is known the 70 per cent paid by the Great Northern Express Company and the Northern Express Company to the Chicago, Burlington & Quincy Railroad is the highest percentage received by any railroad in the United States. It may also be mentioned that the Chicago, Burlington & Quincy Railroad carries matter for the Adams Express Company over its entire line, including the line between Chicago and St. Paul for  $57\frac{1}{2}$  per cent.

Of the 50,000 shares of the Northern Express Company's stock which is outstanding 49,900 shares are owned by the Northern Pacific Express Company. The directors of the company as of June 30, 1911, were as follows:

J. M. Hannaford, Howard Elliott, C. W. Bunn, James N. Hill, George H. Earl.

All of the directors were directors or officials of the Northern Pacific Railway and Messrs. Elliott and Hill were, among other railway lines of which they were directors, also directors of the Chicago, Burlington & Quincy Railroad.

#### PACIFIC EXPRESS COMPANY.

This company discontinued operations as of August 1, 1911. Because of that fact no attempt to trace its intercorporate relationships has been made.



## SOUTHERN EXPRESS COMPANY; CAPITAL STOCK, 50,000 SHARES.

While this company is a corporation its stock has no par value, the shares being simply shares of interest entitling the holder to his proportionate share of all the assets of the company. On June 30, 1911, it owned stock of common carriers to the amount of \$241,800, and bonds and notes of similar companies amounting to \$587,000. Among its stock holdings were 1,185 shares of American Express Company's stock and 1,183 shares of the Adams Express Company.

The directors of this company and the number of shares owned by each as of June 30, 1911, were as follows:

Name.	Number of shares.
M. F. Plant.....	38,235
E. W. Sheldon.....	500
F. de C. Sullivan.....	5
T. W. Leary.....	10
C. L. Loop.....	10
G. H. Tilley.....	571½
O. M. Sadler.....	5
Total.....	39,336½

The directors owned 79 per cent of the total number of shares and the total number of shareholders was 36.

Of the persons above named all are officials of the company, with the exception of Mr. Sullivan. Mr. Plant, chairman of the board of directors, is vice president and director of the Chicago, Indianapolis & Louisville Railway, vice president and director of the Peninsular & Occidental Steamship Company, and director of the Atlantic Coast Line Railroad Company. Mr. Sheldon is a director of the Louisville & Nashville Railroad, one of the principal lines over which the express company operates.

This company has always been closely allied with the Adams Express Company and, indeed, is an offshoot of that company, having been organized at about the beginning of the Civil War to handle the express business in the South. Henry B. Plant, formerly of the Plant system of railroads, steamship lines, and hotels, was one of the founders of the company, and was an officer of the Adams Express Company at the time the new company was formed. The present chairman of the board, M. F. Plant, is a son of H. B. Plant, and, according to the list of stockholders and number of shares owned by each, owns 76 per cent of the total stock issue. How the ownership of this company was secured from the Adams Express Company by the Plants is not apparent, but the two companies have



practically been operated as one system with respect to through way-billing, single graduation of charges, etc.

As shown in the analyses of contracts in the pages which follow, the contract between the Atlantic Coast Line Railroad Company and the Southern Express Company provides—

that the charges for transportation of perishable freight shall be so regulated by the express company that the 50 per centum paid to the railroad shall not be less upon any article transported than the railroad would receive on same if shipped as ordinary freight.

Under the terms of this contract the minimum rate that the express company is permitted to charge on fruit, vegetables, etc., must be twice the freight rate. Contracts between railroad and express companies as a rule permit the express company to make rates 150 per cent of freight rates, while this contract requires that they be 200 per cent on certain commodities. Generally speaking, perishable shipments are charged rates which are very much lower than those charged on matter classed as merchandise. It would appear that the effect of this contract is to require the express company to exact much higher rates generally than it is ordinarily possible for them to make. The point to be especially noted is that this contract is between a railroad in which Mr. Plant is a director and an express company of which he is the principal owner.

The 12 largest holders of shares in this company and the number of shares held by each are as follows:

Name.	Number of shares.
M. F. Plant.....	38,235
Standard Trust Company, trustee for benefit Adams Express Company.....	6,500
Estate C. Spooner.....	750
G. H. Tilley.....	571½
E. W. Sheldon.....	500
William B. Dinsmore.....	333
Miss M. I. Dinsmore.....	333
Stella Gollibert.....	253
May A. Hassell.....	253
Annie M. O'Brien, administratrix.....	253
Blanch M. Washington.....	253
Thomas W. Leary and Robert L. Washington, trustees under will of M. J. O'Brien for Sister Madeleine O'Brien.....	253
Total.....	43,487½

The remaining shares are distributed among 24 holders averaging 63 shares to each stockholder. A number of the shareholders are employees, ex-employees, and families of persons who were formerly connected with the company.

It is found that this company owns shares of the Adams Express Company and of the American Express Company, and that the Adams Express Company is the second largest holder in the Southern Express Company. Also, that this company through interlocking directors is closely related to the Atlantic Coast Line Railroad and to the Louisville & Nashville Railroad.

**UNITED STATES EXPRESS COMPANY; CAPITAL STOCK 100,000 SHARES.**

On June 30, 1911, this company had investments in bonds of railroads and other common carriers to the amount of \$3,791,000 par value, and in stocks of similar companies of a par value of \$276,800. The company's investments are widely diversified, it holding no bonds in any company to an amount in excess of \$100,000 par value, with one exception, while its largest stock holding in a common carrier is \$57,200 par value in the Pennsylvania Railroad Company.

This company owns shares of a par value of \$3,600 in Wells Fargo & Company. Its return to the order of the Commission dated October 16, 1911, shows that 22,028 shares of its stock held in the name of Frank H. Platt, General Counsel for the company, are the property of Mrs. Mary Harriman, who is the largest individual holder of its shares, and who owns more than 22 per cent of the entire number. The stock now owned by Mrs. Harriman is commonly understood to be the same as was formerly owned by the Adams Express Company and the American Express Company, and which was sold by those companies to the late E. H. Harriman in April, 1909.

Mrs. Harriman is also the holder of 64,655 shares of Wells Fargo & Company stock, nearly 27 per cent of the entire number of shares. It is thus found that the largest stockholder in the United States Express Company is also the largest holder in Wells Fargo & Company—a nominally strongly competitive company. Another lady, Ida C. Potts, of Livingston, New York, is also a stockholder in the United States Express Company, Wells Fargo & Company, and the Adams and American Express companies, owning 1,500 shares in Wells Fargo & Company, 1,015 shares in the United States Express Company, 510 shares in the American Express Company, and 900 shares of the Adams Express Company.

Although the Platt family is now, and for a great many years has been, in charge of the affairs of this company, it appears that it does not exercise control through stock ownership. It is not possible to trace more than 1,047 shares to its members, to which may possibly be added 500 shares held in the name of Albert B. Boardman, a director of the company, who is a law partner of Frank H. Platt. The



directors of this company, and the number of shares owned by each on June 30, 1911, were as follows:

Name.	Number of shares.
Albert B. Boardman.....	500
Chauncey H. Crosby.....	100
Edward T. Platt.....	120
Frank H. Platt.....	300
Francis Lynde Stetson.....	100

Of the persons above named, Mr. Crosby was vice president and general manager; Mr. Boardman, secretary; Mr. E. T. Platt, treasurer; and Mr. F. H. Platt, general counsel.

The Platt brothers are officers and directors of the Borough Express Company, a local express company in the borough of Manhattan, New York City, the entire capital stock of which is owned by the United States Express Company. Mr. Stetson is an officer or director in the following companies:

General counsel, Northern Pacific Railway Company; general counsel, Southern Railway; general counsel and director, Erie Railroad; director, Niagara Junction Railway Company; director, New York, Susquehanna & Western; director, Chicago & Erie Railroad Company; director, Erie & Jersey Railroad Company; general counsel, Cincinnati, New Orleans & Texas Pacific Railway Company; general counsel, Southern Railway in Kentucky; general counsel, Southern Railway in Mississippi.

Mr. Stetson, it will be observed, is general counsel for the Northern Pacific Railway, which owns through an intermediary holding company the Northern Express Company. He is general counsel and director in the Erie Railroad, over whose lines Wells Fargo & Company have operated for many years, and whose president, Mr. F. D. Underwood, is a director in Wells Fargo & Company. Mr. Stetson, as personal counsel, is closely associated with Mr. J. P. Morgan, one of whose partners, Mr. Charles Steele, is a member of the board of managers of the Adams Express Company. Through Mr. Stetson a greater or less degree of relationship exists between the United States Express Company and the Hill interests, which own the Great Northern Express Company and the Northern Express Company, and through his position as general counsel or director in railroad companies he touches the Morgan interests, which, through Charles Steele, are interested in the Adams Express Company, and through stock holdings in the New York Central lines are interested in the American Express Company, which in turn is the second largest holder of Wells Fargo & Company stock.



It may reasonably be considered that the United States Express Company through mutuality of stockholding interests and company directorships is closely related to the Great Northern Express Company, the Northern Express Company, the Adams Express Company, the American Express Company, and Wells, Fargo & Company, as well as to many railroad lines.

The Adams and American Express Companies were formerly represented on the board of directors by the presidents of the respective companies, but they retired when their stock was sold in 1909.

Attention is called to the fact that the directors of this company own 1 per cent of its shares and that the 12 largest holders of stock held 35 per cent of the total, the remainder being scattered among the remaining stockholders. The total number of stockholders on April 30, 1911, was 1,600.

WELLS FARGO & COMPANY; CAPITAL STOCK 239,674 SHARES.

As of June 30, 1911, this company had investments in bonds of railroads and other common carriers to the amount of \$8,022,000, par value, and in stocks of similar companies to a par value of \$559,000, making a total investment in such securities of \$8,581,000. Among its important holdings in railroad lines may be mentioned the following: Atchison, Topeka & Santa Fe Railway, bonds \$232,000, stocks \$200,000; Baltimore & Ohio Railroad, bonds and notes \$1,156,000; Central Pacific Railway, bonds \$250,000; Chesapeake & Ohio Railway, bonds and notes \$700,000; Chicago, Milwaukee & St. Paul Railway, bonds \$300,000, stocks \$200,000; Chicago, Milwaukee & Puget Sound Railway, bonds \$778,000; Illinois Central Railroad, bonds \$500,000; National Railways of Mexico, bonds and notes \$560,000; New York Central Lines, bonds \$500,000; Pennsylvania Railroad, bonds \$750,000; Southern Pacific and associated lines, bonds \$1,223,000, stocks \$70,000; Union Pacific Railroad, bonds \$300,000, stocks \$310,000.

Of the lines above named, Wells, Fargo & Company operate over the following:

Atchison, Topeka & Santa Fe Railway; Central Pacific Railway; Chicago, Milwaukee & St. Paul Railway; Chicago, Milwaukee & Puget Sound Railway; Southern Pacific; and through a subsidiary, the Campania Mexicana de Express S. A., over the National Railways of Mexico. At least a degree of common interest between the express company and the roads named may fairly be inferred from the facts herein stated.

The returns to the Commission's order dated October 16, 1911, show that shares to a par value of \$4,590,000 were held by the American Express Company in Wells, Fargo & Company on June 30, 1911,

and that shares amounting to \$282,200, par value, were held by officers and directors of common carriers. To the latter may be added the holdings of Mrs. Mary W. Harriman, \$6,465,500, who is the largest holder of the company's shares, and who is also the largest holder of shares in the United States Express Company. It will be observed that Mrs. Harriman owns 27 per cent of the capital stock, the American Express Company 19 per cent, and that the remaining 54 per cent is divided among 1,991 other shareholders, 1 per cent being held by officers or directors of common carriers.

The directors of this company and the number of shares held by each on June 30, 1911, were as follows:

Name.	Number of shares held.
Richard Delafield.....	1
H. W. De Forest.....	25
William F. Herrin.....	15
H. E. Huntington.....	30
William Mahl.....	1
John J. McCook.....	60
L. F. Loree.....	10
Charles A. Peabody.....	10
William Sproule.....	100
E. A. Stedman.....	10
W. V. S. Thorne.....	1,800
P. M. Warburg.....	300
F. D. Underwood.....	30
Total.....	2,392

Ratio of shares held by directors to total number outstanding, 1 per cent.

Of the above named, Mr. Sproule was chairman of the board of directors and Mr. Stedman vice president of Wells Fargo & Company. Mr. Sproule has since retired and is now president of the Southern Pacific Company. Mr. Herrin is vice president, Mr. Mahl is comptroller, and Mr. Thorne is director of purchases of the Southern Pacific Company. Mr. Peabody is a director in the Southern Pacific Company, Union Pacific Railroad Company, vice president of the Delaware & Hudson Company, Illinois Central Railroad Company, and Pittsburgh, Ft. Wayne & Chicago Railroad Company.

Mr. Loree is president of the Delaware & Hudson Company and director in the following:

Baltimore & Ohio Railroad Company, Capitol Railway, Champlain Transportation Company, Chateaugay & Lake Placid Railway, Cohoes Railway, Cooperstown & Charlotte Valley Railroad, Kansas City Southern Railway, National Railroad of Mexico, and a number of other small steam and electric lines.



Mr. Underwood is president of the Erie Railroad and president or director of its associated lines and interests, including coal, iron, steel, dock, land, banking, and other companies. In the interim between the death of the former president of the express company in March, 1910, and the appointment of his successor in November, 1910, Mr. Underwood acted as managing director of Wells Fargo & Company.

It will be observed that the Southern Pacific, the Delaware & Hudson, and the Erie roads are strongly represented on the directorate of Wells Fargo & Company; that the largest stockholder is also the largest stockholder in the United States Express Company, and that the second largest stockholder is a nominally strong competitor, the American Express Company. Examination of the list of stockholders shows Ida C. Potts a holder of 1,500 shares, who is a large holder of United States Express Company's stock and also of the American and Adams Express Companies' securities, and Samuel Thorne, holding 1,500 shares, who is a director in the Chicago, Burlington & Quincy Railroad and in the Great Northern Railway, both Hill lines. As shown by the list, 12 holders own 54 per cent of the stock.

G. W. Bovenizer, the third largest holder of stock, 5,706 shares, is said to be an employee of Kuhn, Loeb & Company. His name does not appear in the "Directory of Directors," and it is assumed that the stock is held for the banking firm or for some of the Harriman lines. P. M. Warburg, one of the directors, is a member of the firm of Kuhn, Loeb & Company, bankers for the Harriman interests.

Through Mr. Thorne a common interest exists between the Hill lines owning the Great Northern Express Company and the Northern Express Company and Wells Fargo & Company.

#### WESTERN EXPRESS COMPANY; CAPITAL STOCK 500 SHARES.

This company reports that \$50,000 cash was realized from its issue of stock. Its total investment in real property and equipment as of June 30, 1911, was \$64,582, and it has a reserve fund created from earnings of \$50,000, the amount received for its stock.

The company was organized October 30, 1894, and since that date has disbursed in dividends \$292,300 and had as of June 30, 1911, a free surplus of \$32,062.

The income account of the company as reported for the year ending June 30, 1911, shows an operating loss of \$37,218. This may be largely accounted for by the fact that on March 1, 1910, the express company increased the percentage paid to the Minneapolis, St. Paul & Sault Ste. Marie Railway from 45 per cent to 55 per cent, and as the principal part of its business is transported over that line the effect of the increase is apparent. The Minneapolis, St. Paul & Sault Ste. Marie Railway owns the express company, the entire stock being held



in trust by the directors of the express company for the benefit of the railway company.

The directors of this company as of June 30, 1911, were as follows:

E. Pennington, W. L. Martin, C. W. Gardner, H. B. Dike, W. F. Fitch.

The four first named were officers of the Minneapolis, St. Paul & Sault Ste. Marie Railway; Mr. Fitch was president of the Duluth, South Shore & Atlantic Railway.

The Western Express Company is closely allied with the Dominion Express Company, the general manager, traffic manager, and auditor occupying the same position for both the Western and Dominion companies. The Dominion Express Company conducts no operations in the United States, business originating or terminating in this country which passes over its lines being transferred to the Western Express Company. The Dominion Express Company is controlled by the Canadian Pacific Railway, which also controls the Minneapolis, St. Paul & Sault Ste. Marie Railway.

#### ANALYSIS OF CONTRACTS BETWEEN EXPRESS COMPANIES AND RAILWAY COMPANIES.

##### BASIS OF PAYMENT FOR EXPRESS PRIVILEGES.

Contracts between the express companies and the railway companies covering express privileges provide various bases of payment to the railways for their part of the transportation service, *e. g.*, on a fixed daily, monthly, or yearly payment basis; on a tonnage basis at a fixed rate per hundredweight or at a fixed multiple of the freight rate; and on a percentage basis. The prevailing basis, however, is the percentage basis, whereby specified percentages varying from 15 per cent to 70 per cent of the gross receipts of the express companies are paid to the railway companies.

For many years, however, the contracts were made on a tonnage basis. It finally became apparent to the railway companies that through the operation of the graduate scale of charges on packages of small weight, their revenues would be materially increased if the basis of contract were so changed that they might share in the high rates per pound charged by express companies on packages, which under the rule of those companies took graduate charges. The change was accordingly introduced when new contracts were entered into, or when existing contracts were renewed.

On June 30, 1911, the combined operations of the Adams, American, Globe, Great Northern, Northern, Southern, United States, and Western Express companies and Wells Fargo & Company covered approximately 218,000 miles of steam railway. The following state-

ment shows the mileage covered under the several bases and at varying percentages, as of June 30, 1911:

*Basis of payment.*

	Steam railway mileage covered.		Steam railway mileage covered.
	<i>Miles.</i>		<i>Miles.</i>
No compensation paid.....	6.12	Percentage of gross receipts—Contd.	
Tonnage.....	4,544.34	47.5 on merchandise.....	2,850.00
Fixed amounts.....	119.26	50 on perishable traffic.....	2,219.92
Percentage of gross receipts:		48.....	46,493.78
15 or less.....	63.44	50.....	730.70
20 to 35.....	3,570.68	50 on local business.....	1,789.40
40.....	22,517.92	40 on through business.....	9,147.50
40.....	44.40	50 on local business.....	78.01
10 on gross business at stations.....	31.90	45 on through business.....	203.06
40.....	1,790.00	51.....	58,145.91
10 on good will.....	577.71	52.....	4,468.29
40 on merchandise.....	126.40	52.5.....	9,200.64
50 on perishable traffic.....	72.70	55.....	235.00
42.....	14,912.56	55 on local business.....	11,087.76
42.5.....	1,919.73	50 on through business.....	7,344.01
43.....	939.63	56.....	861.74
45.....	129.50	56 on local business.....	1,323.45
45 on local business.....	66.00	50 on through business.....	246.70
47.....	9,845.65	70.....	
47.5.....		All earnings less operating expenses.....	
		Operated for railway company.....	
		Total.....	218,008.51

The percentage basis on which most contracts for express privileges are based is especially favorable to the interests of the railway companies, since they thereby obtain the benefits of increasing traffic, protecting themselves, on the other hand, in many cases against decreases in traffic by requiring a minimum payment from the express company when the percentage of the gross receipts does not reach the guaranteed minimum. In another respect the percentage basis is even more favorable to the railway companies. An examination of the contracts shows that the express companies are, as a rule, not permitted to file tariffs of rates for noncompetitive traffic at less than a certain multiple of the railway companies' freight rates on similar commodities. This multiple is usually one and one-half times the freight rate, but in a number of instances is as high as two times and in one instance two and one-quarter times the freight rate. Inasmuch as the railway company receives its percentage on any charges which the express company may make, it should be noted that it is especially of interest to the railway company that the express company maintain its rates as high as possible. As a general statement, it is also true that no tariff of rates may be made effective by the express company before it has received the approval of the railway companies interested. Through their power to approve rates the railway companies are enabled, in so far as competitive conditions permit,



to require the express companies to make such rates that the amount received as their percentage will not at any time be less than is acceptable to the railway companies.

Certain contracts, for instance those between Wells, Fargo & Company and the Southern Pacific lines, provide that in the division of through noncompetitive express business the proportion of the through rate allotted to the lines of the Southern Pacific shall not, except with the consent of the Southern Pacific Company, be less than the proportion of the current through railroad freight rates of the Southern Pacific Company between points on the lines of that company over which said express business is carried. Further, many of the contracts of the Southern Express Company contain provisions with respect to perishable traffic to the effect that on all such traffic the railway company's return shall not be less than its full open and published tariff rates (freight) or its proportion of the same; or, again, the amount the railway company would have received had it transported such perishable traffic by freight. Further illustrations on this point are given hereinafter under "Limitation of express rates." Such provisions suggest that it is more profitable to the railway companies to have certain traffic handled by express than through their own freight service, since the gross receipts to the railway company are the same in either case, whereas the expense of the railway company, if the traffic is handled by the express company, is considerably less, inasmuch as the express company assumes all responsibility in connection with the loading and unloading of such traffic and its protection en route, assumes all liability for loss or damage thereto, provides refrigeration if necessary, and relieves the railway company of the necessity of accounting for such traffic. This, however, is based on the assumption (which assumption is also believed to be a fact) that the saving in expense mentioned above more than offsets any extra expense to the railroad on account of the better class of equipment required and the increased speed with which such traffic is handled.

On noncompetitive matter, the express rate is, in many instances, limited by the railway to such an amount that the railway company's proportion is greater than it would receive for the same service if rendered by freight. In the case of competitive traffic the railway company insures itself against receiving less than it would receive for hauling the same traffic by freight, at the same time relieving itself of much work and responsibility in connection therewith. There are, further, many instances in connection with competitive traffic where the contracts provide that the express company, with the approval of the railway company, may quote a rate lower than the minimum specified in the contract. This suggests that the rail-



way company recognizes that even the traffic so handled at a lower rate by the express company is a profitable traffic.

The service performed by the railway company incident to the transportation of express matter corresponds in a measure to that performed in connection with its carload freight traffic, with this exception, that for its carload business the railway must bear the expense of accounting and the liability for loss and damage, which is not true with respect to express traffic. While in general it is true that express traffic is transported more expeditiously than freight traffic, the fact must not be lost sight of that many fast freight trains between large market centers make practically the same time as express trains, if not with respect to point of speed, at least with respect to the utility of the service to the consignee.

#### TENDENCY OF PERCENTAGE PAYMENTS.

It is apparently true that when the percentage basis of contract first became effective, 40 per cent of the receipts from operation over the lines was the amount which express companies agreed to pay the railroad companies. This percentage was gradually increased to 45 per cent, 50 per cent, and 55 per cent, and to-day we find the Adams Express Company paying the Pennsylvania system 56 per cent as compared with 40 per cent in 1888, and the Chicago, Burlington & Quincy 57.5 per cent as compared with 47.5 per cent in 1900; and the Great Northern Express Company paying the Great Northern Railroad Company 60 per cent, while on business between Chicago and St. Paul, it pays the Chicago, Burlington & Quincy 70 per cent, as does also the Northern Express Company for privileges between the same two points. With possibly a few exceptions every contract between an important railway line and express companies which became effective, or was renewed within the past five years has called for at least 55 per cent of gross receipts.

A specific illustration of the gradual increase of the percentage paid by express companies may be found in the case of the Chicago, Milwaukee & St. Paul Railway. In January 1894 this company entered into a contract with the United States Express Company on a 40 per cent basis; in April, 1904, the percentage was raised to 45 per cent, and again raised in July, 1907, to 50 per cent. In May, 1909, the United States Express Company was succeeded on this line by Wells, Fargo & Company, who agreed to pay 55 per cent. Wells, Fargo & Company has also increased the basis of compensation paid to the Chicago Great Western Railway, from 40 per cent to 55 per cent. The foregoing illustrations will make the fact clear that the percentage paid important railroads by express companies has increased at least 37.5 per cent, since the percentage basis of contract became effective.

In the statement following are shown detailed data for several of the more important lines or systems mentioned above.

*Statement showing changes in the bases of payments for express privileges for certain railway companies.*

Name of road.	Per cent of gross receipts reported as paid during year ended June 30, 1908.	Name of express company making payment.	Per cent of gross receipts reported paid as of June 30, 1911.	Name of express company making payment.	Mileage covered as of June 30, 1911.
Central Railroad of New Jersey:					
Local.....	43	United States.....	48	United States.....	528.60
Through.....	40				
Chicago & Northwestern system:					
Local.....	50	American.....	55	American.....	9,411.15
Through.....	45				
Money.....	30				
Chicago Great Western Railroad.	40	Wells, Fargo & Co.	55	Wells, Fargo & Co.	1,475.96
Chicago, Milwaukee & St. Paul Railway.	50	United States.....	55	.....do.....	7,352.48
Chicago, Rock Island & Pacific system. <sup>1</sup>	50	Wells, Fargo & Co.	55	United States.....	2,190.78
Colorado & Southern lines.....	50	.....do.....	57.5	Adams.....	1,677.81
Great Northern Railway.....	40	Great Northern.....	60	Great Northern.....	7,294.25
Minneapolis, St. Paul & Sault Ste. Marie Railway.	45	Western.....	55	Western.....	3,695.40
Wisconsin Central Railway.	50	American.....			
Mobile & Ohio Railroad.....	47.5	Southern.....	51	Southern.....	934.00
New York Central lines.....	45	American.....	50	American.....	10,189.77
Norfolk Southern Railroad:					
Perishable.....	50	Southern.....	50	Southern.....	559.00
Merchandise.....	47.5				
Philadelphia & Reading Railway:					
Local.....	45	United States.....	48	United States.....	1,139.12
Through.....	40				
San Pedro, Los Angeles & Salt Lake Railroad.	50	Wells, Fargo & Co.	55	American.....	1,040.70
Southern Railway.....	47.5	Southern.....	51	Southern.....	6,445.00
Spokane, Portland & Seattle Railway.	50	Northern.....	(2)	Northern and Great Northern.	540.95
Union Pacific system.....	50	Pacific.....	55	American.....	6,911.85
Total.....					61,386.82

<sup>1</sup> Represents portion of system only.

<sup>2</sup> All net earnings.

The effect of the increased percentage paid important railroad lines may partially be seen in the amounts paid to the Chicago, Milwaukee & St. Paul Railway and other lines. In 1895 the Chicago, Milwaukee & St. Paul Railway operated 6,206 miles of line, and according to its report to the Commission received \$720,000 for express privileges. According to the report of Wells Fargo & Company for the year ending June 30, 1910, that company operated over 7,352 miles on the Chicago, Milwaukee & St. Paul lines, and paid the railroad company \$1,636,633. This is to say, with an increase of mileage of 18 per cent between 1895 and 1911, the railroad company received an increase for express privileges of over 125 per cent. How much of this increased payment may be due to an increase in traffic handled over the line and how much should be attributed to



the fact that the basis of contract is now 55 per cent, instead of 40 per cent, has not been computed.

For an illustration of the extent to which the railways are benefited by an increase in the percentage of gross receipts paid by express companies for express privileges, reference may be made to an exhibit (No. 43) which contains data for eight roads, as follows: Chicago, Great Western and Union Pacific Railroads; Chicago, Milwaukee & St. Paul; Choctaw, Oklahoma & Gulf; Colorado & Southern; Fort Worth & Denver City; Great Northern; and Wichita Valley Railways, representing approximately 26,000 miles of express operations. The increase, 1911 over 1909, in express privileges for this mileage was \$1,673,699. Of this mileage, approximately 17,000 miles had been increased, 1911 over 1909, from 50 per cent to 55 per cent of gross receipts; 1,800 miles had been increased from 50 per cent to 57.5 per cent, and 7,200 miles had been increased from 40 per cent to 60 per cent. By applying the percentage in effect in 1909 to the gross receipts from express operations for these roads for 1911, it was found that approximately \$896,000 of the \$1,673,699 increase in express privileges was due solely to the increased percentage paid, the remainder being due to an increase in the volume of business.

Another illustration of the effect of the increased percentage paid to railway lines may be found on the following chart. This chart shows in diagrammatic form the results obtained by a comparison of the revenues to the railroads from freight, passenger, mail and express service for the year 1910, with similar figure for 1893, and further comparisons of the increases in revenues for the respective services named with the increase in population during the same period.

*Percentage of increase of revenue received by railroads from transportation of express, freight, passengers and mail for year 1910 over 1893; also increase per unit of population.*

Ratio of increase:

Express revenue	184.42
Freight revenue	132.26
Passenger revenue	108.78
Mail revenue	72.07

Ratio of increase:

Population	38.25
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Ratio of increase per unit of population:

Express revenue	105.80
Freight revenue	68.06
Passenger revenue	51.06
Mail revenue	24.50



## LIMITATION OF EXPRESS RATES.

In addition to the reference made above to the limitations placed on express rates to be charged the public, the following excerpts bearing on this question from the contracts on file with the Commission may be of interest:

(a.) Contract between Baltimore & Ohio Railroad Company and United States Express Company:

The express company shall not fix its rates for transportation and other services connected with express traffic between local noncompetitive points on the railroads of the railroad company at less than twice the rates charged by the railroad company for the same or similar matter upon freight trains, except, however, that the express company may make said local rate (express rates) at the same excess over freight rates which have heretofore existed between the same points on like articles.

The express company shall not fix its rates for transportation and other services connected with the express business via the railroads of the railroad company between points reached by other railroads at any less than the rates fixed by other express carriers between same points, except for reasons to the prejudice of the routes via the railroads of the railroad company.

The contract further provides, in the case of the provision first quoted, that in the event that the agreement should operate to keep the express company from obtaining its quota of business, then the railroad company will permit such modification as is acceptable to it.

(b.) Contract between the Philadelphia & Reading Railway Company and the United States Express Company:

It is further agreed that the rates on express traffic, and the rules and regulations applied thereto, established by the express company from time to time, shall be subject to the approval of the railway company, and that the express company shall furnish to the railway company, when requested, copies of tariffs in force on the lines of the railway company during the term of this agreement; it being understood that no express rate shall be made which shall be less than two and one-quarter times the freight tariff rates on such traffic, and that, unless compelled by law, no less rate shall be charged on any article carried by the express company without the approval of the freight traffic department of the railway company first having been obtained. It is further understood and agreed, however, that in the event that an express company in competition with the United States Express Company for business between given points shall make a lower rate than is charged by the United States Express Company, and in the further event that the express company, with the cooperation and assistance of the railway company, shall fail, within a reasonable time, to induce such competing express company to establish and maintain the reasonable rate desired by the railway company, that then, and in such event, the express company shall have the right hereunder to make the same rate or rates as shall have been made and charged by such competing express company.

(c.) Contract between the Cincinnati, Hamilton & Dayton Railway Company and subsidiary lines and the United States Express Company:

This contract provides that between competitive points the railroad company permits express company to charge the same rates as competing express companies, but between noncompetitive points the rates shall not be less than one and one-half times freight rate upon the same articles, except by consent of the railroad company.

(d.) Contract between New York Central & Hudson River Railroad Company and American Express Company:

The express company agrees, as far as it has the legal right to do so, that its rates between noncompetitive points on the lines covered by this agreement shall not be less than twice the tariff of freight rates of the railroad company on the class of freight carried, without the consent in writing of the railroad company; on business carried between points competitive with other express companies the express company shall have the right to fix such rates as it may find necessary to make to secure its proper share of business (section 10).

(e.) Contract between Southern Pacific Company and Wells Fargo & Company:

The express company agrees that it will not, except with the consent of the Southern Pacific Company, carry any noncompetitive express matter over any of the lines covered by this contract at rates less than one and one-half times the railroad freight rates of the Southern Pacific Company, and that in the divisions on through express business the proportion of the through rate allotted to the lines of the Southern Pacific shall not, except with the consent of the Southern Pacific Company, be less than the proportion of the current through railroad freight rates of the Southern Pacific Company between the points over which said express business is carried (section 12).

(f.) Contract between the Norfolk & Western Railway Company and Southern Express Company:

If at any time the rates charged the public by the express company per 100 pounds for noncompetitive business shall be deemed unsatisfactory to the railroad company, then the same shall be modified to meet its views, it being understood, however, that on all business which is competitive to either express company or railway company, and matter that can be transported by United States mail, the express company may regulate and fix its own rates, but such rates shall be made known to the railway company on request, and if disapproved by it, shall be so changed as to accord with its views (section 5).

\* \* \* and the express company is authorized to make such rates as will tend to promote such traffic (perishable), provided that such rates on all such perishable freights shall not be less (unless a lower tariff is legally enforced) than 150 per cent of the open and published public tariff freight rates on such business as promulgated by the railway company, and that the railway company shall not have less than 47.5 per cent of the gross earnings accruing from such business to the express company on the lines of the railway company, with a guarantee to the railway company that its portion as a minimum shall not be less than its full, open, and published public tariff rates or its proportion of same (section 12).

(g.) Contracts between Atlantic Coast Line Railroad Company and Seaboard Air Line Railway and Southern Express Company:

Of the gross revenue earned and collected from the transportation of perishable freight, the express company shall pay the railroad 50 per centum; \* \* \* it being understood that the charges for transportation of perishable freight shall be so regulated by the express company that the 50 per centum paid to the railroad shall not be less upon any article transported than the railroad would receive on same if shipped as ordinary freight.

The provisions of the contracts given above indicate that express rates are to a great extent under the control of the railway companies.



Practically every existing contract in one form or another provides that the rates of the express companies are subject to the approval of the railway company. These provisions further show that the express companies have two standards for determining rates—one based on competitive conditions, the other, where competition is absent, on what the traffic will bear.

Assuming that competition still influences express rates, it is fair to assume that under normal conditions rates established under competitive conditions would not reach a point where the business must be conducted without a fair profit. To the extent, then, that express rates for noncompetitive business are higher than for competitive business, the public is required to pay an additional profit to the express company on account of absence of competition measured by the difference in the two standards of rates. It is doubtful, however, whether the public derives any benefit worth consideration by competitive conditions existing between express companies. The provision in the Baltimore & Ohio contract which prohibits the express company charging less between competitive points than rates fixed by other express companies between the same points takes away practically every incentive for competition as between the express companies. The contract between the Philadelphia & Reading Railway and the United States Express Company in effect goes even further; it fixes the rate to be charged by the express company at two and one-quarter times the freight rate on similar traffic, and to maintain this standard of rates provides that when a competing express company quotes a lower rate than the rate applied by the United States Express Company between competitive points, both the railroad company and the express company shall use their influence to induce such competing express company to maintain the rates acceptable to the railroad company.

Under such conditions it is difficult to realize how the public would derive any benefit from competitive conditions. It is also doubtful whether the railroad and express company would have any considerable difficulty in inducing the competing express company, in the absence of other competitive conditions, to establish the standard desired by the railroad company since the increased rate would practically offset any decrease in traffic resulting from the higher rate.

Another fact indicating the absence of competition between alleged competing express companies is that all common point merchandise rates for every important express company in the United States are issued through Mr. F. G. Airy, agent for the companies, No. 2 Rector street, New York, N. Y.



## PROVISIONS IN RE CONSIDERATION OF THE INTERESTS OF RAILWAY COMPANIES.

Many of the contracts contain a provision whereby the express company pledges itself, in so far as it legally may, to conduct its business in such a manner that both parties to the contract shall derive as great benefit from the business as possible. In a few cases, however, the duty imposed upon the express company by the contract relative to the protection and fostering of the railway's interest is more clearly defined. Typical of such provisions are the following:

(a.) From contract between Norfolk & Western Railway and Southern Express Company:

The express company agrees to route its freight to and from exclusive points on the lines of the railway company so as to give said railroad company its longest haul, except and only where such delay ensues by this action as will jeopardize the business. The express company also further agrees that at such terminal or other points where its business may be handled by another company, the latter will be required to carry out the meaning and intent of this provision (section 17).

(b.) From contract between Plant system of Railroads and Southern Express Company:

The express company will endeavor to route its freight to and from exclusive points on the line of the railway so as to give said railway its longest haul (section 18).

(c.) From contract between Southern Pacific Company and Wells Fargo & Company:

\* \* \* it being for the interest of both parties to this contract to cooperate in securing and fostering business, the express company agrees to exert itself, so far as it lawfully may, to aid and further the interests of the Southern Pacific Company and to increase and develop the express business along the lines covered by this contract (section 11).

(d.) A somewhat different phase of this matter is presented in the following provision contained in the contracts between the lines of the Pennsylvania system and the Adams Express Company:

\* \* \* on all traffic carried over any of the lines of the railroad company, destined to or shipped from points beyond any of the termini thereon, the railroad company shall receive fifty-six per centum of its proportion, determined by applying to the express company's gross receipts from such traffic the percentage which the express rate over the line of the railroad company bears to the sum of the express rates of all lines traversed, from originating to terminating agency in the express company's territory, the understanding being that foreign lines, over which the express company operates under one agreement between such foreign lines and the express company, are to be treated in same manner as the lines of the railroad company. And for the purposes of this agreement the "gross receipts" shall be the receipts without deductions for or on account of gathering or delivering charges, terminal expenses, lighterage, loss or damage, or any other expense whatsoever: *Provided*, that on all traffic interchanged with the Chicago, Burlington & Quincy Railway and foreign lines in Chicago, Burlington & Quincy territory, and also with the New York, New Haven & Hartford Railroad and foreign lines in New York, New Haven & Hartford territory, the proportion of the gross receipts shall be determined by the application of the through express

rate over that portion traversed of the entire Pennsylvania system, including the affiliated lines: *Provided further*, that on all traffic interchanged with the Louisville & Nashville Railroad the proportion of the gross receipts shall be determined on a mileage basis (section 10).

The express company has separate contracts with each of the constituent companies of the Pennsylvania system, *i. e.*, the Pennsylvania Railroad; Pennsylvania Company; Northern Central Railway; Pittsburgh, Chicago, Cincinnati & St. Louis Railway; Vandalia Railroad, etc., and for the purpose of determining the proportion of the gross receipts from the express business over the Pennsylvania system each of the individual lines of the system is considered as a separate railway. The effect of this practice is shown by the following illustration:

A thirty-pound package of merchandise moved by the Adams Express Company between Hot Springs, Va., and Rochester, N. Y., would be carried from Hot Springs to Washington, D. C., over the Chesapeake & Ohio Railway. From Washington, D. C., to Rochester, N. Y., it would be carried over the Pennsylvania system in the following manner: Washington, D. C., to Baltimore, Md., over the Philadelphia, Baltimore & Washington Railroad; Baltimore to Williamsport, Pa., over the Northern Central Railway; Williamsport to Rochester, N. Y., over the Pennsylvania Railroad. The merchandise rates applying on this shipment between the points named are as follows:

Hot Springs to Rochester (through rate).....	\$2. 50
Hot Springs to Washington, D. C.....	1. 25
Washington, D. C., to Rochester.....	1. 75
Washington, D. C., to Baltimore.....	. 50
Baltimore to Williamsport.....	1. 00
Williamsport to Rochester.....	1. 25

The total through charge assessed by the express company on this package would be \$1.15.

Now, if the express company in prorating the charges on this package between the Chesapeake & Ohio Railway and the Pennsylvania system for the purpose of determining the gross receipts over each railway had followed the usual method of prorating on local rates, and had considered the three Pennsylvania lines between Washington, D. C., and Rochester, N. Y., as one railway, and applied the \$1.75 rate as the local rate between Washington, D. C., and Rochester, N. Y., then the charge \$1.15 would have been prorated between the Chesapeake & Ohio Railway and the Pennsylvania system as follows:

**Chesapeake & Ohio Railway:**

Hot Springs to Washington, D. C.....	(125) (300)	or \$0. 48
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**Pennsylvania system:**

Washington, D. C., to Rochester.....	(175) (300)	or . 67
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1. 15



Instead of applying the usual method of prorating, however, the Express Company considers the Philadelphia, Baltimore & Washington Railway, the Northern Central Railway, and the Pennsylvania Railroad as separate roads, and the charge of \$1.15 is prorated as follows:

Chesapeake & Ohio Railway:

Hot Springs to Washington, D. C.....	$\frac{\{125\}}{400}$	or \$0. 36
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Philadelphia, Baltimore & Washington Railroad:

Washington, D. C., to Baltimore.....	$\frac{\{50\}}{400}$	or \$0. 14
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Northern Central Railway:

Baltimore to Williamsport.....	$\frac{\{100\}}{400}$	or . 29
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Pennsylvania Railroad:

Williamsport to Rochester.....	$\frac{\{125\}}{400}$	or . 36	
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1. 15

The Chesapeake & Ohio Railway under its contract receives 50 per cent of the Express Company's gross receipts from operations over its lines, while the Pennsylvania system lines receive 56 per cent from operations over their lines. By using the first method of prorating the Chesapeake & Ohio would receive 24 cents and the Pennsylvania system lines 38 cents of the Express Company's through charge of \$1.15, while under the second method the Chesapeake & Ohio receives 18 cents and the Pennsylvania system lines 44 cents, divided as follows:

Philadelphia, Baltimore & Washington Railroad.....	\$0. 08
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Northern Central Railway.....	. 16
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Pennsylvania Railroad.....	. 20
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The Pennsylvania lines are benefited to the extent of 6 cents at the expense of the Chesapeake & Ohio Railway through the use of the second method of prorating.

The amount collected from the shipper or consignee is the same in either case, and the matter is therefore one which is only of indirect interest to the public, except when through the application of the second method the express revenue of the less fortunate carrier is diminished to such an extent that such carrier is forced to require the express company to maintain high rates in order that the express business over its road may be profitable.

In this connection, however, it should be noted that the provision of the contract quoted above provides that on all traffic interchanged with the Chicago, Burlington & Quincy Railway and foreign lines in Chicago, Burlington & Quincy territory, and also with the New York, New Haven & Hartford Railroad, and foreign lines in New York,



New Haven & Hartford territory, the proportion of gross receipts are determined by the application of the through express rates over that portion traversed of the entire Pennsylvania system, including the affiliated lines; also that on all traffic interchanged with the Louisville & Nashville Railroad the proportion of gross receipts are determined on a mileage basis.

SPECIAL MATTERS DEVELOPED IN CONNECTION WITH THE EXAMINATION OF CONTRACTS BETWEEN RAILWAYS AND EXPRESS COMPANIES.

(a.) Contracts between New York Central Lines and American Express Company:

The contracts with the New York Central & Hudson River Railroad; Cleveland, Cincinnati, Chicago & St. Louis Railway; Michigan Central Railroad; and Pittsburgh & Lake Erie Railway, covering approximately 9,000 miles, entered into on January 1, 1903, for five years on a 45 per cent basis were canceled on July 1, 1907, four and one-half years later, and new contracts executed on a 50 per cent basis, the express company waiving its right under the contract entered into January 1, 1903, to insist on a 45 per cent basis, for the full term of the contract. Through this waiver of its rights the express company apparently voluntarily paid to the roads comprising the New York Central System for six months 5 per cent more of its gross earnings for that period than was required under the five-year contract entered into on January 1, 1903. In this connection it is significant to note that the New York Central & Hudson River Railroad owns 30,000 shares of the 180,000 shares of the stock of the American Express Company.

(b.) Contract between Chicago & Alton Railroad and American Express Company:

The contracts with the Chicago & Alton Railroad entered into during May, 1908, were presumably on the same percentage basis as contracts with the company operating over the Chicago & Alton lines immediately previous to that date, but the amounts paid under the contracts by that company were considerably less than are now required from the American Express Company by the Chicago & Alton Railroad. The following quotation from the American Express Company's answer to question 11 of the Commission's order No. 4198 bears to this point:

With reference to the Chicago & Alton Railroad. That railroad had previously been occupied by the United States Express Company, and from information which we obtained at the time we occupied the line we believe the United States Express Company's contract was on the basis of 45 per cent on basis of through business accruing on the line and 50 per cent on the charges on local business, and that the payment by that express company to the railroad company in the year previous to the date the line was occupied by our company was from \$325,000 to \$350,000.

The guaranty of the American Express Company to the Chicago & Alton requires that the minimum payment shall be as follows:

First and second years.....	\$425,000
Third year.....	450,000
Fourth year.....	475,000
For each year thereafter.....	500,000

(c.) Contract between Union Pacific system and American Express Company:

The following quotation from the answer of the American Express Company to part (d) of question 11 is significant in that it throws light on the considerations involved in determining the percentage of gross receipts to be paid by the American Express Company for the right to operate over the Union Pacific system:

As to the rate of percentage of the gross earnings accruing on those lines that was paid by the express company occupying the lines prior to the date the lines were occupied by this company, we know in a general way what those payments were on important lines, and, taking up the Union Pacific lines, which were the most important of all the lines during that period, the answer would be:

This company succeeded the Pacific Express Company on those lines. The Union Pacific Railroad had owned a certain percentage of capital stock of the Pacific Express Company. The Pacific Express Company, if we are correctly informed, had paid as a first payment to the railroad company 50 per cent of its earnings accruing on the lines. It had been paying additionally to the railroad company the railroad company's proportion on the basis of stock owned, of the net earnings; and we believe that the guaranteed annual payment made by this company to the Union Pacific Railroad Company represented the average annual payment received by it from the Pacific Express Company for the five preceding years.

The contract now in force between the American Express Company and the Union Pacific Railroad provides that the express company shall pay to the railroad company 55 per cent of the gross receipts, based on local rates, from all business. The contract further requires that the minimum guaranty of the express company to the railroad company shall be \$1,478,486.49. It will be noted that this amount is considered by the American Express Company as representative of the average annual payment received by the Union Pacific Railroad Company from the Pacific Express Company for the five preceding years. As a matter of fact, however, the minimum guaranty apparently is based not only on amounts received by the Union Pacific Railroad, but also on amounts received by the Oregon Short Line, Oregon Railroad & Navigation Company, and Ilwaco Railroad, which lines, formerly operated separately, are now included in the contract between the Union Pacific and the American Express Company.



The annual reports of the above-named railroads to the Commission or the years named show amounts on account of express privileges and dividends received from Pacific Express Company as follows:

Year.	Dividends paid by Pacific Express Company to Union Pacific Railroad on Pacific Express Company stock.	Amount of express privileges paid by Pacific Express Company on 50 per cent basis to roads now included under Union Pacific contracts.
1909.....	\$180,000	\$1,582,993
1908.....	108,000	1,144,154
1907.....	384,000	1,182,135
1906.....	384,000	1,038,799
1905.....	492,000	884,900
	1,548,000	5,832,981
		1,548,000
Total for 5 years.....		7,380,981
Average per year.....		1,476,196

The amount of express privileges (\$1,582,993) shown above for 1909 includes an amount of \$320,000 paid in 1909 to the Union Pacific Railroad by the Pacific Express Company as its portion of a distribution of surplus. The Union Pacific at that time owned two-fifths of the stock of the Pacific Express Company. This amount was designated by the Pacific Express Company as payment for "extra facilities" furnished by the railroad and charged to express privileges, but in reality was a distribution of accumulated surplus.

From these figures it will be noted that the total amount paid by the Pacific Express Company to the Union Pacific Railroad and subsidiary lines on account of express privileges, "extra facilities," and dividends on \$2,400,000 par value of Pacific Express stock owned by the Union Pacific Railroad for the five years named was approximately \$7,380,981, or an average per year for the five years of \$1,476,196. This amount agrees substantially with the minimum guarantee of \$1,478,486.

It should further be noted that the Pacific Express Company ceased operations over the Union Pacific Railroad on or about April 1, 1910, and about this date the Union Pacific Railroad disposed of its holdings of stock of the Pacific Express Company.

If, as the American Express Company states in its returns to the Commission, the rate of 55 per cent of gross receipts now paid to the Union Pacific represents the average return to the Union Pacific from its former extension of express privileges to the Pacific Express Company and its returns from the stock of the Pacific Express Company, then the Union Pacific is receiving from the American Express Company a return annually based on stock which it disposed of during the year 1910 and in addition a return on the amount paid for "extra



facilities," which in reality represented a portion of the Pacific Express Company's surplus assets.

Another condition imposed upon the American Express Company incident to entry upon the lines of the Union Pacific Railroad was the purchase of the Southern Pacific's holdings of Wells Fargo & Company stock to the extent of 45,900 shares, or nearly 19 per cent of the total number of shares. The price paid, as near as can be ascertained, was close to \$200 per share, which is the valuation assigned to this stock in the American Express Company's annual report to the Commission for the year ending June 30, 1911. The highest bid for this stock on the market at the time of the sale was about \$175 per share, and from accounts obtainable in regard to this transaction the price paid was considerably in advance of the market price of the stock.

(d.) Contract between Baltimore & Ohio Railroad and United States Express Company:

For some time prior to 1887 the Baltimore & Ohio Railroad maintained an express service department, but in that year sold its equipment for this service to the United States Express Company and entered into a thirty-year contract giving the latter company the privilege of operating an express business over its lines. This contract, in addition to the annual payment of 40 per cent of express revenues, provides for a payment of \$1,500,000 par value in stocks of the express company. The money for the cash payment was secured by the issue and sale of another \$1,500,000 par value of stock, making a total stock issue by the express company on account of this contract of \$3,000,000. The contract further provided that the express company, if the railroad gave fifteen days' notice that it desired the express company to purchase such stock, should purchase 5,000 shares of the express company stock at the price of \$80 per share.

The physical property received from the Baltimore & Ohio at the time this contract was entered into was inventoried at \$151,844.86. In addition to this property the express company received the good will and all existing rights and facilities connected with the business; also all express contracts in force at that time with other railroads.

Two points should be noted in this connection with this transaction.

First. The \$3,000,000 par value of stock which the express company issued in order to obtain the Baltimore & Ohio contract has been sold to the public and no provision has been made by the express company to retire this stock at the expiration of the term of the present contract. It is fair to assume, however, that the express company will continue to demand rates from the public high enough to pay dividends on this \$3,000,000 par value of stock outstanding.

Second. The express company has charged \$100,000 annually since 1887 as an offset to the annual decrease in value of its rights under the contract. This entire amount was, until recently, charged

annually to express privileges. At the present time a major portion of it continues to be so charged, the result of which is to show the payments for express privileges on account of the Baltimore & Ohio contract nearer 45 per cent of gross revenues than 40 per cent. If this \$100,000 charged annually against revenues of the express company had been placed in the hands of a trustee the express company would, at the expiration of the contract, have had a sufficient fund with which to retire the outstanding stock, but as the situation now is no such fund has been provided for and whatever amounts have been charged to express privileges on account of Baltimore & Ohio contract have been used for dividends or investments or in the ordinary course of business.

(e.) Contract between Philadelphia & Reading Railway and United States Express Company:

In regard to the contract between the United States Express Company and the Philadelphia & Reading Railway, one point should be mentioned: The present contract is dated February 16-17, 1911, and increased the compensation to the railway company from 40 per cent of gross revenues of through business and 45 per cent of local business to 48 per cent of gross revenues of all business. The increased percentage of gross receipts, however, was made by that contract retroactive to August 7, 1908. The former contract expired in August, 1908, but contained a provision that the contract should remain in force after August, 1908, until ninety days' notice was given by either party to the other of its termination. The annual reports of the United States Express Company to the Commission for the years 1909-10 show that the payments by the express company to the Philadelphia & Reading Railway were on the basis of the former contract. Apparently the former contract remained in force until February, 1911. Making the contract retroactive necessitates the express company paying to the railroad company as back payment for express privileges approximately \$100,000. In this connection it should be noted that the contract with the railway company limits rates to not less than two and one-quarter times the freight rates on similar traffic. On the basis of 48 per cent of gross revenues the railway company would receive for its part in the transportation service approximately 108 per cent of its regular freight revenue on similar traffic. The amount of service rendered by the railway company in handling such traffic, as well as the liability in connection therewith, is considerably less than if such traffic were transported by freight.

(f.) Contract between St. Louis & San Francisco system and United States Express Company:

The St. Louis & San Francisco System was, prior to January 1, 1910, operated by Wells Fargo & Company. Since that date the express



business over these lines has been transferred to the United States Express Company. The underlying motive of this transfer appears to have been a 6 per cent loan of \$2,000,000 made by the United States Express Company to the St. Louis & San Francisco Railroad Company August 5, 1908. It appears that this railroad company had entered into negotiations with the Wells Fargo & Company for this loan, but for certain reasons the negotiations were unsuccessful. Negotiations were then entered into with the United States Express Company and were successfully terminated resulting also in the subsequent transfer of the express service to the United States Express Company. The express company's return to the Commission's order of October 16, 1911, states relative to this loan that "this loan has been wholly satisfied."

(g.) Contract between Chicago Great Western Railroad and Wells Fargo & Company:

That portion of Wells Fargo & Company's business over the mileage of the Chicago Great Western Railroad furnishes another illustration of the tendency to increase the amounts paid to railways. The Wells Fargo & Company's annual report to the Commission for the year ending June 30, 1908, shows that the company covered, at that time, approximately 1,047 miles of the mileage of the Chicago Great Western Railroad. The express privileges paid to this railway company, on the basis of 40 per cent of the gross receipts for a part of the year and 50 per cent for the remainder of the year, were \$196,257. On June 30, 1909, according to the company's annual report for that year, the mileage operated had increased to 1,458 miles, and express privileges, on a 50 per cent basis, amounted to \$253,911. On June 30, 1910, the mileage operated was shown as 1,474 miles, and express privileges, on the basis of 50 per cent to November 30, and 55 per cent from December 1, 1909, were shown as \$290,657. For June 30, 1911, the mileage operated had increased but 1 mile over 1910, while express privileges, on a basis of 55 per cent, had increased to \$338,391. The contract between the companies, effective December 1, 1909, provided that for the two years ending November 30, 1911, the minimum guaranty under the contract should be \$325,000; for the two years ending November 30, 1913, \$350,000, and for the remaining years to the expiration of the contract, \$375,000 per annum. The present contract provides that the railroad's proportion shall be 55 per cent of the gross receipts. Now, comparing the amount of express privileges for the year ending June 30, 1911 (\$338,391), with the minimum guaranty for the years ending November 30, 1912 and 1913 (\$350,000), it is clear that unless traffic over the lines of the railway increases, the express company will be required to pay a percentage greater than 55 per cent of the gross receipts to meet the annual minimum guaranty provided in the contract.



## (h.) Contracts between Southern Pacific Company and Wells Fargo &amp; Company:

During the early years of the express company's existence, a considerable amount of stock was issued to railway companies as consideration for express privileges. The evils growing out of this procedure are illustrated by the contracts with the Southern Pacific Company.

In November, 1878, Wells Fargo & Company increased its capital stock from \$5,000,000 to \$6,250,000. The entire increase of \$1,250,000, par value, was issued to the Central Pacific and the Southern Pacific Railroads as advance payments on account of contract privileges for the operation of the express business on the lines of these companies for the term of 15 years, 1879 to 1893, inclusive.

In 1893 this contract expired and another was entered into between the Southern Pacific Company and Wells Fargo & Company, providing for the payment of the sum of \$688,750 in cash, and the transfer and delivery of 16,625 shares of capital stock, valued at \$130 per share, as advance payment on account of contract provisions for the operation of express business on the Southern Pacific lines for the term of 21 years, 1894 to 1914, inclusive. The stock delivered under this contract was obtained through an increase in the express company's capital stock from \$6,250,000 to \$8,000,000, par value.

At the time the last-mentioned contract was executed, the capital stock issued as a part consideration for the contract executed in 1879 was not retired, and still continues to be outstanding. The amounts of the annual payments of Wells Fargo & Company to the Southern Pacific Company for the right to conduct its express business under that contract are not known, but the payments for dividends to holders of stock on account of the issue of \$1,250,000, par value, are approximately as follows:

Dividends disbursed during the period of contract, 1879-1893.....	\$1, 500, 000
Dividends disbursed since the expiration of contract, including the 300 per cent extra dividend paid in 1910.....	5, 512, 500
<b>Total.....</b>	<b>7, 012, 500</b>

Under the contract executed in 1893, and in force until 1914, the payments to June 30, 1911, have been approximately as follows:

Cash, at execution of contract.....	\$668. 750
Capital stock of Express Co., 16,625 shares valued at \$130 per share.....	2, 161, 250
Dividends accruing on stock mentioned next above, including the 300 per cent extra dividend declared in 1909.....	7, 000, 000

Express privileges, 40 per cent of gross receipts annually, from 1893 to 1911, aggregate amount not known.

Since June 30, 1907, payments for express privileges under this contract have been as follows:

Year ending June 30:

1908.....	\$1, 813, 123
1909.....	1, 844, 810
1910.....	1, 965, 852
1911.....	2, 012, 800
Total.....	7, 636, 585

On December 22, 1909, the stockholders of the company voted to increase the company's stock from \$8,000,000, par value, to \$24,000,000. On December 23, 1909, the day following, the board of directors declared an extra dividend of \$300 per share out of the accumulated surplus earnings of the company. This extra dividend on the 80,000 shares of stock outstanding amounted to \$24,000,000. The following is a copy of the resolutions adopted by the board of directors of the company at their meeting on December 23, 1909, in connection with the declaration of this extra dividend:

*Resolved*, That the regular semiannual dividend of 5 per cent be declared, payable on January 15, 1910, to the stockholders of record at 3 o'clock p. m. on Monday, January 3, 1910; and

That an extra dividend of three hundred dollars (\$300) per share be declared, payable on Thursday, February 10, 1910, out of the accumulated surplus earnings of the company to the stockholders as registered on its books at 3 o'clock p. m. on Monday, January 3, 1910.

That for the purpose of such dividends the books of the company be closed at 3 o'clock p. m. January 3 and reopened at 10 o'clock a. m. January 16, 1910.

*And further resolved*, That the stockholders of the company shall be entitled to subscribe to the sixteen million dollars (\$16,000,000) of new stock, the issue of which was authorized at the stockholders' meeting of December 22, 1909, at the rate of one hundred dollars (\$100) per share, according to their respective holdings as registered upon the stock books of the company at 3 o'clock p. m. on Monday, January 3, 1910, viz: In the proportion of two (2) shares of new stock for each share of old, and that the right to such subscription shall terminate at 3 o'clock p. m. on Monday, February 7, 1910, on or before which last-mentioned date and hour payment for all amounts subscribed must be made.

That certificates of stock for the amount so paid shall be issued, dated February 7, 1910, and such stock shall be entitled to all dividends thereafter declared.

That, for purposes of convenience, stockholders may, if they so desire, assign to the company a portion of their cash dividend in payment of their subscription to the new issue of stock.

It is fair to assume that the practical effect of the extra dividend, coming simultaneously with the increase of the capital stock, with the subscription privileges, was equivalent to a cash distribution of 100 per cent and a stock dividend of 200 per cent.

Now, if the holders of the \$1,250,000, par value, of stock issued in 1878 availed themselves of this opportunity to subscribe for two additional shares for each share held, and it is fair to assume that this privilege was taken advantage of by at least a part of the holders,



that issue would now be represented by \$3,750,000, par value, of stock, on which amount dividends are expected. With respect to the \$1,662,500, par value, issued to the Southern Pacific as part consideration for the contract entered into in 1893, the records on file with the Commission show that the Southern Pacific held \$1,530,000, par value, of this stock until early in 1910. The records also indicate that the Southern Pacific availed itself of the right to subscribe to two additional shares for each share held, thereby increasing the par value of its holdings to \$4,590,000. Some time prior to June 30, 1910, the Southern Pacific Company sold its entire holdings of stock of Wells Fargo & Company, 45,900 shares, to the American Express Company at a figure close to \$200 per share, the highest bid on the market at that time, however, not being over \$175 per share. The annual report of the American Express Company for the year ending June 30, 1910, shows the acquisition of this entire block of stock valued at \$9,180,000.

These issues of stock and their accretions in the form of dividends, subscription privileges, etc., have proven very remunerative to the Southern Pacific Company. Omitting from the consideration the fact that Wells Fargo & Company paid annually since 1893 to the Southern Pacific Company 40 per cent of the gross receipts for express privileges, which percentage corresponds to that paid during these years by express companies to certain other large railways there accrued to the Southern Pacific Company on account of the 16,625 shares of stock received in 1893, through dividends and proceeds from the sale of this stock to the American Express Company, approximately \$16,000,000. It should be remembered in this connection that this stock was without cost to the Southern Pacific Company. The contract on account of which this stock was issued will expire in 1914, but it is reasonable, however, to assume that this block of stock now owned by the American Express Company and valued at more than \$9,000,000 will continue outstanding.

(i.) Contracts between the Missouri Pacific Railway and Wells Fargo & Company:

For some years prior to June, 1911, the express business over the mileage of the Missouri Pacific Railway was conducted by the Pacific Express Company under a contract which provided that the Express Company should pay the Railway Company 50 per cent of its gross receipts from the traffic carried by the Railway Company for the Express Company. No minimum guarantee was provided in that contract. In this connection it should also be noted that prior to the dissolution of the Pacific Express in August, 1911, that \$2,400,000 of the \$6,000,000 par value of the capital stock was owned by the Missouri Pacific Railway. This stock was issued to the Rail-



way Company in 1886 as part consideration for express privileges received. No cash was realized on this stock. The remainder of the capital stock of the company, \$3,600,000, was similarly issued as follows: \$2,400,000 to the Union Pacific Railroad and \$1,200,000 to the Wabash Railroad.

On June 1, 1911, a contract was entered into between the Missouri Pacific and St. Louis, Iron Mountain & Southern Railways, and Wells Fargo & Company, which provided for payments on account of express privileges, as follows:

Article II, sections 2 to 6, inclusive:

SECTION 2. The express company shall pay to the treasurer of the Missouri Pacific Railway Company immediately upon the execution of this contract, as advance payment on account of transportation, the sum of one million sixty-six thousand six hundred sixty-six and 66/100 dollars (\$1,066,666.66).

SECTION 3. In addition to the foregoing payment the express company shall pay to the treasurer of the Missouri Pacific Railway Company, monthly, within fifteen (15) days after the end of each month during the term hereof, the following-named amounts during the periods specified:

During the 5 fiscal years ending July 31 (monthly)—

1916.....	\$112, 559
1921.....	126, 735
1926.....	140, 910
1931.....	155, 085

SECTION 4. The express company shall as soon as practicable after the close of each month, but not later than ninety (90) days thereafter, make and transmit to the railway companies a statement of the business transacted during said month; and the railway companies shall have the right at any and all times to examine through their proper officer the books and accounts of the express company relating to such business for the purpose of determining the correctness of the statements so rendered.

SECTION 5. If, during any fiscal year, fifty per cent (50 per cent) of the gross express earnings accruing on the lines of the railway companies on express matter carried by the express company shall be in excess of the following sums during the periods specified:

During the 5 fiscal years ending July 31—

1916.....	\$1, 134, 000
1921.....	1, 304, 000
1926.....	1, 474, 000
1931.....	1, 644, 000

then the express company shall, as soon as such earnings can be determined by it, but in no event later than ninety (90) days after the end of any such fiscal year, in addition to the monthly payments above specified, pay to the treasurer of the Missouri Pacific Railway Company the amount of such excess.

The gross express earnings accruing on the lines of the railway companies on express matter carried by the express company partly on and partly beyond the lines of the railway companies shall be such portion of the through charge as the local merchandise express rate on the line of the railway companies bears to the sum of the local merchandise express rates on all lines over which such express matter moved.

SECTION 6. The express company guarantees that the monthly payments to the railway companies provided by section 3 (of this article), as adjusted by the yearly payments, if any, provided by section 5 (of this article), when aggregated for each of the four five-year periods of this contract, shall be no less than the following amounts:

For the 5 fiscal years ending July 31—

1916.....	\$7, 263, 800
1921.....	8, 114, 400
1926.....	8, 964, 900
1931.....	9, 815, 400

*Provided, however,* That if at the end of any of the five-year periods ending, respectively, July 31, 1916, 1921, 1926, and 1931, it shall appear that the sum of the payments made by the express company to the railway companies during said five-year period is less than the amount guaranteed under the provisions of section 6 hereof, because of a decrease in the earnings of the express company directly traceable to state or national regulation of rates, the express company and the railway companies shall adjust such difference between the amounts paid under sections 3 and 5 of this Article II and the aggregate payment guaranteed by section 6, and the express company shall pay to the railway companies such difference as it may have failed to pay during such five-year period under the provisions of section 5 hereof, less such part thereof as may be directly traceable to such state or national regulation of rates.

Relative to the advance payment of \$1,066,666.66 by Wells Fargo & Company to the Missouri Pacific Railway it is not known whether this amount was paid in consideration of future express privileges or in connection with the Missouri Pacific Company's stock holdings in the Pacific Express Company prior to its dissolution. The Pacific Express Company as a going concern paid to the Missouri Pacific Railway during the last seven years of its operations in dividends on stock received in 1886 approximately \$2,280,000, an average of slightly more than 13½ per cent per annum on the capital stock or an average of approximately 51 per cent on the property reported as invested in the express business as of June 30, 1911.

The tangible assets of the Pacific Express Company at the time of dissolution were such that the Missouri Pacific could hardly have realized therefrom \$20 per share, and it would appear improbable that the controlling interests of the Pacific Express Company would vote to dissolve so profitable a corporation and accept an amount of less than \$20 per share. There is also another fact which might indicate that the advance payment was in the nature of a payment in connection with the Missouri Pacific's holdings of the Pacific Express stock. The Wabash Railroad, as stated above, held \$1,200,000 par value of the Pacific stock. On June 1, 1911, the same date that Wells Fargo & Company entered into contract with the Missouri Pacific, a contract was executed between the Wells Fargo & Company and the Wabash Railway in which an advance payment of \$533,333.34 was provided for. This amount it should be noted bears the same relation to the advance payment to the Missouri Pacific as the Wabash holdings of



Pacific Express stock bore to the holdings of the Missouri Pacific. These transactions have been too recently consummated to ascertain from the Wells Fargo & Company reports to the Commission how these advance payments will be carried on the company's books and whether or not annual charges will be made to express privileges during the term (20 years) of the contract.

The basis of payment for express privileges by Wells Fargo & Company to the Missouri Pacific, as indicated by the above quotation from the contract, differs from the regular percentage basis and compared with the percentage basis is more favorable to the railway company. Under this basis a fixed amount is paid monthly as a first payment. This payment is increased at the close of each of the five fiscal years ending June 30, 1916, by an amount representing the difference between 50 per cent of gross express earnings accruing from operations over the Missouri Pacific system and \$1,134,000 (provided 50 per cent of gross earnings are in excess of \$1,134,000). The amount of \$1,134,000, as near as can be determined, represents the average amount received annually for the last five years by the Missouri Pacific System from the Pacific Express Company for express privileges over approximately similar territory. If at the close of the first five years the monthly payments and the annual adjustments do not equal \$7,263,000, then the express company is required to make such additional payment as will make the aggregate of its payments for privileges during the five-year period \$7,263,800, or an average of \$1,452,760 annually.

The statement following illustrates in a general way the practical result under the basis of payment provided in this contract as compared with the fixed percentage basis of contract.

This statement is based on three possible conditions—

(a) That the gross express receipts accruing annually for the Missouri Pacific system from Wells Fargo & Company's operations for the five years ended June 30, 1916, increased 1 per cent annually over the gross receipts for the system from the Pacific Express Company's operations for the year ended June 30, 1911, 50 per cent of the latter amount being \$1,179,719.

(b) Same as (a), except that gross receipts increased 5 per cent annually for the five years named.

(c) Same as (a), except that gross receipts increased 10 per cent annually for the five years named.



Statement illustrating the variation in per cent of gross receipts received by the Missouri Pacific Railway under contract with Wells Fargo & Company.

(a) ON BASIS OF AN INCREASE OF 1 PER CENT ANNUALLY, AS STATED ABOVE.  
(COLUMN 3.)

1	2	3	4	5	6	7	8	9
Year ended June 30—	Arbitrary amount provided by contract for computing payments in addition to monthly payments.	Amount representing 50 per cent of gross express earnings on system.	Excess payment in addition to regular monthly payments for express privileges (based on preceding column).	Amount provided in contract to be paid annually in monthly payments.	Total of monthly payments and excess payments (cols. 4 and 5).	Amounts required by contract as minimum of 5-year payments provided for in columns 4 and 5.	Excess payment at close of 5-year period to meet minimum provided by contract.	Average per cent of gross earnings paid for express privileges annually for 5-year period.
1912.....	\$1,134,000	\$1,191,516	\$57,516	\$1,350,708	\$1,408,224	\$7,263,800	\$102,332	59.75
1913.....	1,134,000	1,203,431	69,431	1,350,708	1,420,139			
1914.....	1,134,000	1,215,465	81,465	1,350,708	1,432,173			
1915.....	1,134,000	1,227,620	93,620	1,350,708	1,444,328			
1916.....	1,134,000	1,239,896	105,896	1,350,708	1,456,604			
.....		6,077,928	407,928	6,753,540	7,161,468	.....	.....	.....

(b) ON BASIS OF AN INCREASE OF 5 PER CENT ANNUALLY, AS STATED ABOVE.  
(COLUMN 3.)

1912.....	\$1,134,000	\$1,238,705	\$104,705	\$1,350,708	\$1,455,413	\$7,263,800	.....	57.92
1913.....	1,134,000	1,300,640	166,640	1,350,708	1,517,348			
1914.....	1,134,000	1,365,672	231,672	1,350,708	1,582,380			
1915.....	1,134,000	1,433,956	299,956	1,350,708	1,650,664			
1916.....	1,134,000	1,505,654	371,654	1,350,708	1,722,362			
.....		6,844,627	1,174,627	6,753,540	7,928,167	.....	.....	.....

(c) ON BASIS OF AN INCREASE OF 10 PER CENT ANNUALLY, AS STATED ABOVE  
(COLUMN 3.)

1912.....	\$1,134,000	\$1,297,690	\$163,690	\$1,350,708	\$1,514,398	\$7,263,800	.....	56.83
1913.....	1,134,000	1,427,549	293,549	1,350,708	1,644,167			
1914.....	1,134,000	1,570,205	436,205	1,350,708	1,786,913			
1915.....	1,134,000	1,727,225	593,225	1,350,708	1,943,933			
1916.....	1,134,000	1,899,947	765,947	1,350,708	2,116,655			
.....		7,922,526	2,252,526	6,753,540	9,006,066	.....	.....	.....

An examination of the statement next preceding suggests that this basis is exceedingly favorable to the railway company in that it is relieved to a considerable extent from sharing with the express company the effects of business depressions. Under this basis a decrease in gross express receipts automatically works to increase the percentage accruing to the railway company. The only way in which the express company may decrease the percentage accruing to the railway company is to increase the gross receipts from operation. The extent to which this may be done is illustrated by the following statement:

If Wells Fargo & Company increases its gross express receipts for Missouri Pacific system over the gross express receipts of the Pacific

Express Company for the year ended June 30, 1911, annually for 5 years to the extent of—

	Per cent.
0 per cent, then the railway's average annual percentage would be.....	61.57
1 per cent, then the railway's average annual percentage would be.....	59.75
5 per cent, then the railway's average annual percentage would be.....	57.92
10 per cent, then the railway's average annual percentage would be.....	56.83
20 per cent, then the railway's average annual percentage would be.....	55.14

It should further be noted that the contract provides for a revision of the basal figures at intervals of five years. This readjustment also tends to the advantage of the railway, since its effect is to give the railway the benefit of the express company's effort to increase its business. The basal figures are so adjusted as to require an average increase of approximately 12 per cent in gross express receipts during a five-year period. If this rate of increase is maintained the percentage paid to the railway remains practically the same. If the express company fails to maintain this percentage of increase for the five-year period, then the result under the revised basal figures for the next period is an increased average percentage to the railway. Conversely a higher rate of increase than approximately 12 per cent would result in a slight decrease in the railway percentage. The basal figures, however, are so selected that decreases in gross express receipts more readily influence the railway's percentage than do increases.

(j.) Contract between the Wabash Railroad and Wells Fargo & Company:

This contract in so far as the general provisions relative to the payments for express privileges are concerned, is identical to the Missouri Pacific contract referred to above, the specific amounts named therein, however, being suited to the Wabash business. As an advance payment the Wabash Railroad received from Wells Fargo & Company \$533,333.34. This amount has already been mentioned in connection with a similar payment to the Missouri Pacific Railway. It is reasonable to assume that the purpose of these payments was the same in both cases.

#### RATIO OF NET EARNINGS TO COST OF PROPERTY.

The total cost of the real property and equipment used in operation by the ten express companies named in the table as of June 30, 1911, as reported by the companies, amounted to \$26,065,712 and the operating income of the same companies for that year was \$9,319,486. In other words, the investment returned 35.75 per cent. For the separate companies the return varies from 12.92 per cent for the United States Express Company to 434.18 per cent for the National Express Company, which, with an investment of \$32,166, had an operating income of \$139,659.

The average ratio of operating income to the cost of real property and equipment for the three years ended June 30, 1909, 1910, and 1911, for each of the five more important companies, was as follows:

	Per cent.
Adams Express Company.....	25.89
American Express Company.....	27.11
Southern Express Company.....	372.50
United States Express Company.....	17.57
Wells Fargo & Company.....	65.30

The average ratio for the three years of the ten companies was 44.53 per cent. The ratios for each company, the total mileage over which each operated, and the number of express offices in the United States maintained by each will be found in the table following.



*Comparative statement showing mileage, number of offices, cost of property, operating income, and ratio of operating income to cost of property, for years ended June 30, 1909, 1910, and 1911.*

Name.	Total mileage over which operations were conducted as of June 30.1		Number of express offices in the United States as of June 30.		Total cost of real property and equipment as returned for the years ended June 30.		Operating income as returned for the years ended June 30.		Ratio of operating income to cost of real property and equipment for the years ended June 30.			
	1911	1910	1911	1910	1911	1910	1911	1910	1911	1910	1909	Average for 3 years named.
	<i>Miles.</i>	<i>Miles.</i>							<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per cent.</i>
Adams Express Co.....	36,561	36,495	5,895	5,873	\$6,568,186	\$6,461,408	\$1,240,549	\$2,027,528	18.89	31.38	27.59	25.98
American Express Co.....	56,878	55,578	7,212	7,108	10,339,854	9,940,977	2,960,514	2,623,849	28.63	26.39	26.06	27.11
Globe Express Co.....	2,904	1,916	198	133	87,153	52,255	15,948	78,990	18.30	15.13	137.91	86.52
Great Northern Express Co.....	8,804	8,215	784	748	107,224	86,018	227,513	724,878	212.18	182.71	182.65	597.90
National Express Co.....	1,640	1,640	216	218	32,166	29,175	139,659	138,884	434.18	476.03	406.49	439.03
Northern Express Co.....	7,626	6,862	698	644	218,500	218,694	506,431	693,083	316.92	329.11	290.90	372.50
Southern Express Co.....	32,581	32,213	3,973	3,923	568,790	375,954	1,731,665	1,844,974	304.45	490.74	358.71	372.50
United States Express Co.....	32,748	32,771	4,734	4,559	2,946,068	2,774,695	380,654	448,031	12.92	16.14	25.20	17.57
Wells, Fargo & Co.....	58,472	51,523	5,100	5,100	5,892	3,784,085	2,153,771	3,183,475	41.96	74.87	86.22	65.30
Western Express Co.....	4,851	3,510	513	356	64,582	40,469	1,37,218	103,068	(?)	254.69	257.91	111.81
Total.....	243,065	230,723	29,323	28,662	26,065,712	24,231,594	9,319,486	11,866,760	35.75	48.97	50.21	44.53

<sup>1</sup> Excludes mileage covered in "Outside operations" (foreign business).

<sup>2</sup> Deficit.

## OPERATING INCOME.

The tables next following present the results of operations by the express companies for the years ended June 30, 1909, 1910, and 1911. It should be noted that the gross receipts shown in these tables include revenues derived from the sale of money orders, travelers' cheques, c. o. d. checks, and other nontransportation sources, as well as revenues from transportation proper. With two exceptions, every company shows an increase in gross receipts, express privileges, operating expenses, and taxes, 1910 over 1909, and 1911 over 1910. It is apparent from an examination of the tables that the volume of express business in this country is rapidly increasing.

24 I. C. C.

Comparative statement showing ratios of certain income account items to gross receipts and operating revenues for the years ended June 30, 1909, 1910, and 1911.

## ADAMS EXPRESS CO.

Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations.....	\$32,855,185	.....	.....	\$31,810,970	.....	.....	\$28,860,100	.....	.....
Gross receipts from outside operations.....	92,399	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	32,947,584	100.00	.....	31,810,970	100.00	.....	28,860,100	100.00	.....
Express privileges—Dr.....	17,083,832	51.85	.....	16,494,960	51.85	.....	14,938,227	51.76	.....
Total operating revenues.....	15,863,752	.....	100.00	15,316,010	.....	100.00	13,921,873	.....	100.00
Operating expenses—Express operations.....	14,271,041	89.96	89.96	13,086,248	85.44	85.44	12,079,188	86.77	86.77
Operating expenses—Outside operations.....	106,683	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	14,377,724	43.63	90.63	13,086,248	85.44	85.44	12,079,188	41.86	86.77
Taxes accrued.....	245,479	.....	1.55	202,234	.....	1.32	145,184	.....	1.04
Operating income or deficit.....	1,240,549	3.77	7.82	2,027,528	6.37	13.24	1,697,501	5.88	12.19
Total mileage covered <sup>1</sup> .....	36,561	.....	.....	.....	.....	.....	.....	.....	.....
Number of offices in United States.....	5,895	.....	.....	36,495	.....	.....	34,360	.....	.....
				5,873			5,706		

## AMERICAN EXPRESS CO.

Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations.....	\$41,683,196	.....	.....	\$36,468,447	.....	.....	\$31,896,497	.....	.....
Gross receipts from outside operations.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	41,683,196	100.00	.....	36,468,447	100.00	.....	31,896,497	100.00	.....
Express privileges—Dr.....	19,372,526	46.48	.....	16,677,941	45.73	.....	14,545,778	45.60	.....
Total operating revenues.....	22,310,670	.....	100.00	19,790,506	.....	100.00	17,350,719	.....	100.00
Operating expenses—Express operations.....	18,996,798	85.57	85.15	16,864,491	85.21	85.21	14,902,675	85.89	85.89
Operating expenses—Outside operations.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total.....	18,996,798	45.57	85.15	16,864,491	85.21	85.21	14,902,675	85.89	85.89
Taxes accrued.....	333,358	.....	1.58	302,166	.....	1.53	271,171	.....	1.56
Operating income or deficit.....	2,960,514	7.10	13.27	2,623,849	7.20	13.26	2,176,873	6.83	12.55
Total mileage covered <sup>1</sup> .....	56,878	.....	.....	.....	.....	.....	.....	.....	.....
Number of offices in United States.....	7,212	.....	.....	55,578	.....	.....	48,225	.....	.....
				7,108			6,433		



GLOBE EXPRESS CO.

	\$700, 429	\$604, 113	\$248, 883	
Gross receipts from express operations.....	100.00	100.00	100.00	
Gross receipts from outside operations.....	50.02	49.60	49.23	
Total.....	100.00	100.00	100.00	
Express privileges—Dr.....	350, 332	304, 459	270, 216	
Total operating revenues.....	350, 097	304, 459	278, 637	100.00
Operating expenses—Express operations.....	324, 337	216, 538	205, 995	73.93
Operating expenses—Outside operations.....	324, 337	216, 538	205, 995	73.93
Total.....	9, 812	8, 931	8, 685	1.32
Taxes accrued.....	15, 948	78, 990	68, 957	24.75
Operating income or deficit.....				
Total mileage covered!.....	2, 904	1, 916	1, 900	
Total offices in the United States.....	198	133	127	

GREAT NORTHERN EXPRESS CO.

Gross receipts from express operations.....	\$2,602,148					\$2,524,064					\$2,164,433		
Gross receipts from outside operations.....	2,602,148	100.00				2,524,064	100.00				2,164,433	100.00	
Total.....	1,556,983	59.80				1,056,082	41.84				811,493	42.11	
Express privileges—Dr.....	1,046,165					1,467,982					1,252,940		100.00
Total operating revenues.....	778,877	29.93				689,554	27.71				592,361	27.37	47.28
Operating expenses—Express operations.....													
Operating expenses—Outside operations.....													
Total.....	778,877	29.93				689,554	27.71				592,361	27.37	47.28
Taxes accrued.....	39,775	1.53				43,550	1.73				31,343	1.45	2.50
Operating income or deficit.....	227,513	8.74				724,878	28.72				629,236	29.07	50.22
Total mileage covered 1.....		8,804					8,215					7,412	
Total offices in the United States.....		784					748					646	

**Excludes mileage covered in "Outside operations."**

Comparative statement showing ratios of certain income account items to gross receipts and operating revenues for the years ended June 30, 1909, 1910, and 1911—Continued.

## NATIONAL EXPRESS CO.

Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations.....	\$1,232,275			\$1,185,180			\$1,104,025		
Gross receipts from outside operations.....									
Total.....	1,232,275	100.00		1,185,180	100.00		1,104,025	100.00	
Express privileges—Dr.....	477,515	38.75		457,194	38.58		422,024	38.23	
Total operating revenues.....	754,760		100.00	727,986		100.00	682,001		100.00
Operating expenses—Express operations.....	609,373	40.45	80.74	583,736	49.25	80.18	575,172	52.10	84.34
Operating expenses—Outside operations.....									
Total.....	609,373	40.45	80.74	583,736	49.25	80.18	575,172	52.10	84.34
Taxes accrued.....	5,728	47	76	3,366	45	74	1,253	11	18
Operating income or deficit.....	139,669	11.33	18.50	138,884	11.72	19.08	106,576	9.56	15.45
Total mileage covered <sup>1</sup> .....									
Total offices in United States.....	1,640	216		1,640	218		1,714	218	

## NORTHERN EXPRESS CO.

Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations.....	\$3,164,531			\$3,409,964			\$3,103,462		
Gross receipts from outside operations.....									
Total.....	3,164,531	100.00		3,409,964	100.00		3,103,462	100.00	
Express privileges—Dr.....	1,547,427	48.90		1,773,123	51.10		1,589,150	51.20	
Total operating revenues.....	1,617,104		100.00	1,696,841		100.00	1,514,312		100.00
Operating expenses—Express operations.....	1,056,702	33.39	65.34	952,418	27.45	56.13	850,239	27.40	56.15
Operating expenses—Outside operations.....									
Total.....	1,056,702	33.39	65.34	952,418	27.45	56.13	850,239	27.40	56.15
Taxes accrued.....	53,971	01.71	3.34	51,340	01.48	3.03	40,707	01.31	2.69
Operating income or deficit.....	506,431	16.00	31.32	693,083	19.97	40.84	623,366	20.09	41.16
Total mileage covered <sup>1</sup> .....									
Total offices in United States.....	7,626	698		6,862	644		6,788	607	

## SOUTHERN EXPRESS CO.

Gross receipts from express operations.....	\$14,932,704	.....	\$13,880,442	.....	\$12,732,958	.....
Gross receipts from outside operations.....	14,942,861	.....	13,889,843	.....	12,732,958	.....
Total.....	7,233,559	100.00	6,610,498	100.00	6,134,421	100.00
Express privileges—Dr.....	7,093,302	48.41	7,279,345	47.59	6,598,537	43.18
Total operating revenues.....	5,820,839	38.95	5,279,606	38.01	5,002,190	39.28
Operating expenses—Express operations.....	13,237	75.51	14,252	72.53	100.00	100.00
Operating expenses—Outside operations.....	5,834,076	.09	17	.10	20	75.81
Total.....	143,561	.96	5,233,858	1.01	5,002,190	1.44
Taxes accrued.....	1,731,665	11.59	1,405,513	13.29	95,077	1.75
Operating income or deficit.....			1,844,974	25.34	1,501,270	22.75
Total mileage covered <sup>1</sup> .....	32,591	32.213	33,181	33.181		
Total offices in United States.....	3,973	3,923	3,886	3,886		

## UNITED STATES EXPRESS CO.

Gross receipts from express operations.....	\$20,364,074	.....	\$17,689,887	.....	\$16,861,626	.....
Gross receipts from outside operations.....	20,364,074	.....	17,689,887	.....	16,861,626	.....
Total.....	9,717,523	100.00	8,308,220	100.00	7,788,730	100.00
Express privileges—Dr.....	10,646,551	47.72	9,381,667	46.97	9,072,896	46.19
Total operating revenues.....	10,142,497	46.80	8,841,420	49.98	8,357,996	49.75
Operating expenses—Express operations.....	10,142,497	95.27	9,216	94.24	8,357,996	92.45
Operating expenses—Outside operations.....	123,400	1.16	8,841,420	.98	8,357,996	1.13
Total.....	380,654	.61	92,216	.52	102,353	1.13
Taxes accrued.....		1.87	448,031	2.53	562,547	6.42
Operating income or deficit.....						
Total mileage covered <sup>1</sup> .....	32,748	32.771	24,206	24,206		
Total offices in the United States.....	4,734	4,559	3,453	3,453		

<sup>1</sup> Excludes mileage covered in "Outside operations."



Comparative statement showing ratios of certain income account items to gross receipts and operating revenues for the years ended June 30, 1909, 1910, and 1911—Continued.

WELLS FARGO & CO.

Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations	\$25,167,428			\$27,178,652			\$24,464,651		
Gross receipts from outside operations	143,356			125,050			24,464,651		
Total	25,310,784	100.00		27,303,702	100.00		11,370,662	100.00	
Express privileges—Dr	11,796,021	46.60		12,866,364	47.12		13,093,989	46.48	
Total operating revenues	13,514,763		100.00	14,437,338		100.00	9,688,680		100.00
Operating expenses—Express operations	10,995,792	43.45	81.36	10,949,561	40.10	75.84			74.07
Operating expenses—Outside operations	115,291	.46	.86	116,884	.43	.81			
Total	11,112,083			11,066,245			9,688,680		
Taxes accrued	243,909	.98	1.84	187,618	.69	1.30	132,820	.54	1.01
Operating income or deficit	2,153,771	8.51	15.94	3,183,475	11.66	22.05	3,262,479	13.34	24.92
Total mileage covered <sup>1</sup>	58,472			51,523			65,698		
Total offices in the United States	5,100			5,100			5,892		

WESTERN EXPRESS CO.

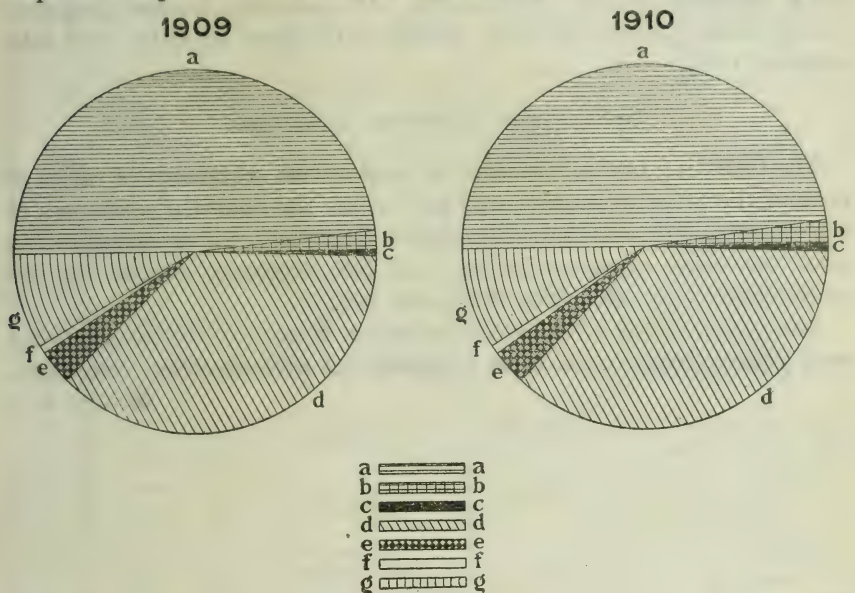
Account.	1911			1910			1909		
	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.	Amount.	Per cent of gross receipts from all operations.	Per cent of total operating revenues.
Gross receipts from express operations	\$872,696			\$733,388			\$634,838		
Gross receipts from outside operations	872,696			733,388			634,838		
Total	1,745,392	100.00		1,466,776	100.00		1,269,676	100.00	
Express privileges—Dr	496,177	56.86		340,269	46.40		308,184	48.55	
Total operating revenues	376,519		100.00	393,119		100.00	326,654		100.00
Operating expenses—Express operations	406,733	46.61	108.02	284,573	38.80	72.39	229,931	36.22	70.39
Operating expenses—Outside operations									
Total	406,733	46.61	108.02	284,573	38.80	72.39	229,931	36.22	70.39
Taxes accrued	7,004	.80	1.86	5,478	.75	1.39	5,615	.88	1.72
Operating income or deficit	\$ 37,218	2.427	9.88	103,068	14.05	26.22	91,108	14.35	27.89
Total mileage covered <sup>1</sup>	4,851			3,510			3,456		
Total offices in United States	513			356			343		

<sup>1</sup> Excludes mileage covered in "Outside operations."

Deficit.

## HOW THE REVENUE DOLLAR IS DIVIDED.

The charts next shown illustrate in a graphic way the disposition made of the dollar of gross revenue by the express companies for the years ended June 30, 1909 and 1910. The circles represent the dollar of receipts. The items "maintenance," "traffic expenses," "transportation expenses" and "general expenses" are the titles given the four general accounts in the Classification of Operating Expenses of Express Companies. "Transportation expenses" include salaries and



	1909 side.		1910 side.	
	Per cent.	Amount.	Per cent.	Amount.
(a) Express privileges (payments to railroads) . . . .	48.29	\$64,032,126.69	47.85	\$69,917,561.83
(b) Maintenance . . . . .	1.06	2,199,651.38	2.01	2,932,566.43
(c) Traffic expenses . . . . .	.50	657,676.14	.63	915,029.02
(d) Transportation expenses (terminal expenses) . . .	37.16	49,273,031.18	36.49	53,321,741.73
(e) General expenses . . . . .	3.12	4,142,696.59	3.09	4,521,135.80
(f) Taxes . . . . .	.68	906,519.79	.77	1,126,726.38
(g) Operating income . . . . .	8.59	11,387,489.15	9.16	13,381,554.47

commissions of local agents, office supplies and expenses, stable supplies and expenses, salaries and expenses of train messengers, loss and damage, and numerous other items. Although expenses other than those properly assignable to terminals are included in the account, the larger percentage of the amount shown is chargeable to terminal expenses and the words "terminal expenses" have been inserted in parenthesis in order to avoid possible confusion with the amount paid railroads and other transportation agencies, which is shown as "express privileges."

As shown by the charts, nearly 50 cents of each dollar received by the express companies goes to transportation lines, about 42 cents is required to pay the expenses of operation, and about three quarters of a cent goes for taxes. The remainder is the profit from operation, and is available for the payment of dividends and other purposes.

The charts represent the combined figures for thirteen express companies for the years named, and it should be stated that if the combined results for 1911 were shown in the same manner there would be some variation in the percentages, the operating income probably being about 7 cents in 1911 against 9.16 cents in 1910, and 8.59 cents in 1909.

#### OPERATING EXPENSES ANALYZED.

The following tables represent a comparative statement of ratios of each of the 50 primary accounts into which the operating expenses of the express companies have been separated by the Commission to the total operating expenses for each of the companies named for the years ended June 30, 1909, 1910, and 1911.

The tables afford a detailed comparison of each of the accounts for each year not only of the same company but with all other companies.

24 I. C. C.



Comparative statement of ratios to total operating expenses of primary expense accounts for the years ended June 30, 1909, 1910, and 1911.

Account.	Adams Express Co.			American Express Co.			Globe Express Co.			Great Northern Express Co.			National Express Co.		
	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909
<b>I. Maintenance:</b>															
1. Superintendence.....	0.06	0.08	0.06	0.09	0.05	0.02	1.22	1.70	1.86	0.60	0.54	0.64	0.03	0.03	0.06
2. Buildings, fixtures, and grounds.....	.19	.20	.14	.45	2.64	.18	.37	.26	.25	.08	.02	.02	.13	.08	.15
3. Office equipment.....	.88	1.22	.63	.46	.64	.37				.62	.49	.39			
4. Cars—repairs.....															
5. Cars—renewals.....															
6. Cars—depreciation.....	.93	.97	.91	.78	.89	1.02	.29	.93	.26	.33	.45	.75	1.06	.34	.29
7. Horses.....	2.05	2.69	2.07	1.11	.99	.86	.96	.75	.93	.61	.78	.93	.08	.30	.34
8. Vehicles—repairs.....	.12	.39	.27	.38	.22	.34	1.02	1.02	.22	.18	.21	.08	.08	.19	.22
9. Vehicles—renewals.....	.27	.61	.34	.23	.30	.39	.23	.22	.22	.35	.11	.21	.03	.16	.13
10. Stable equipment.....	.23	.34	.30	.14	.09	.12	.01	.06	.02	.02	.02	.02	.03	.03	.12
11. Transportation equipment.....	.01	.01	.07	.03	.04	.05				.17	.05	.01	.77	.80	1.24
12. Other expenses.....	.04	.07	.20	1.06	1.06	1.10	1.16	1.06	1.05				1.09	1.11	1.46
13. Maintaining joint facilities—Dr.....	1.07	1.17													
14. Maintaining joint facilities—Cr.....															
Total maintenance.....	4.70	6.41	4.48	3.62	5.70	3.25	2.92	3.84	3.49	2.94	2.65	3.31	1.27	1.91	2.09
<b>II. Traffic expenses:</b>															
15. Superintendence.....	.29	.34	.21	.69	.73	.63	3.06	3.54	3.34	1.31	1.15	1.15			
16. Outside agencies.....	.01	.09	.03	.59	.45	.44	.84	.07	.08	.14	.07	.01			.01
17. Advertising.....	.01	.02	.09	.13	.09	.03	.53	.19	.20	.05	.04	.04			
18. Traffic associations.....	.01	.09	.05	.04	.10	.06	.15	.18	.12	.05	.04	.47			
19. Stationery and printing.....	.12	.17	.07	.19	.13	.02	.60	1.19	.95	.41	.49				
20. Other expenses.....															
Total traffic expenses.....	.52	.62	.33	1.64	1.51	1.18	5.18	5.17	4.69	1.91	1.75	1.67			.01
<b>III. Transportation expenses:</b>															
21. Superintendence.....	2.02	2.12	2.05	5.19	4.94	5.20	3.14	2.64	2.51	4.59	4.35	4.77	3.20	3.18	3.13
22. Office employees.....	30.13	29.21	29.65	23.57	23.33	24.79	25.63	25.29	25.73	18.13	17.85	18.44	19.12	19.12	19.28
23. Commissions.....	8.06	8.24	8.35	8.18	8.18	8.30	6.56	6.50	5.75	19.63	21.80	21.25	6.05	5.89	5.57
24. Wagon employees.....	17.62	16.91	17.28	14.36	14.15	14.96	11.58	10.29	10.48	9.82	9.62	9.98	10.44	10.13	9.59
25. Office supplies and expenses.....	2.82	2.68	2.77	2.88	2.92	2.96	2.59	1.65	1.57	4.07	1.61	1.48	1.78	1.61	1.46
26. Rent of local offices.....	3.72	4.08	4.33	3.94	4.19	4.23	7.74	6.57	6.92	4.02	4.46	4.84	2.93	2.79	2.81
27. Stable employees.....	3.21	2.17	2.97	2.05	2.05	2.50	11.35	10.21	10.35	.37	.39	.46	7.79	7.29	7.37
28. Stable supplies and expenses.....	6.27	9.30	8.57	8.09	8.24	8.60	7.16	12.91	12.85	4.95	4.77	6.10	8.11	8.16	8.40
29. Train employees.....	6.37	6.22	6.45	7.19	6.88	7.16	10.31	12.91	12.85	13.97	13.78	13.95	8.11	8.16	8.40
30. Train supplies and expenses.....	.18	.16	.13	.29	.23	.18	.15	.16	.17	.18	.09		.23	.18	.21

<sup>1</sup> Credit.

*Comparative statement of ratios to total operating expenses of primary expense accounts for the years ended June 30, 1909, 1910, and 1911—Continued.*

Account.	Adams Express Co.			American Express Co.			Globe Express Co.			Great Northern Express Co.			National Express Co.		
	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909
<b>III. Transportation expenses—Continued.</b>															
31. Transfer employees.....				5.44	5.28	5.22	0.03	0.07		2.31	2.63	2.60	5.95	5.42	5.16
32. Stationery and printing.....	2.11	1.85		1.93	1.57	1.41	3.07	2.18		2.34	2.84	.01	1.05	.02	
33. Loss and damage—freight.....	3.85	2.87		3.83	2.52	1.93	.63	.74	2.13	2.29	2.71	2.62	1.19	1.03	.91
34. Loss and damage—money.....	.21	.12		.02	.04	.05	.01	.03	.94	.47	1.76	2.17	1.62	1.26	1.00
35. Damage to property.....	.04	.04		.04	.05	.01	.01	.01				.10			
36. Injuries to persons.....	.24	.08		.18	.47	.17	.03	.01		.20	.24	.04	.01	.02	
37. Other expenses.....	.12	.08		.23	.05	.01	.13	.05	.01			.22	.05	.10	.10
38. Operating joint facilities—Dr.....	1.53	1.98		1.25	1.81	1.90	.25	.31	.27	5.59	2.57	1.22	36.05	37.19	38.79
39. Operating joint facilities—Cr.....	1.64	1.75		1.20	1.34	1.47	1.69	1.30	1.59	1.94	1.00	1.43	1.11	1.63	1.84
<b>Total transportation expenses.....</b>	<b>87.77</b>	<b>86.26</b>	<b>88.55</b>	<b>87.29</b>	<b>85.10</b>	<b>87.71</b>	<b>77.04</b>	<b>76.40</b>	<b>76.36</b>	<b>89.41</b>	<b>89.71</b>	<b>88.81</b>	<b>92.60</b>	<b>92.16</b>	<b>92.15</b>
<b>IV. General expenses:</b>															
41. Salaries and expenses of general officers and attendants.....	1.08	1.45	2.50	1.00	1.11	1.27	1.82	2.39	2.52	.51	.52	.60	.44	.47	.62
42. Salaries and expenses of clerks and attendants.....	3.17	3.00	2.87	4.41	4.75	5.18	9.33	9.88	10.26	3.67	3.78	4.04	1.87	1.96	1.83
43. General office supplies and expenses.....	.34	.62	.16	.32	.53	.10	1.31	1.37	1.30	.40	.46	.30	.23	.24	.21
44. Law expenses.....	.72	.69	.34	.41	.52	.52	.01	.01	.01	.82	.08	.02	.18	.18	.22
45. Insurance.....	.58	.57	.53	.61	.12	.09	.70	.19	.71	.82	.88	.89	.43	.04	
46. Pensions.....	.09	.11	.09	.47	.49	.55							.66	.60	.52
47. Stationery and printing.....	.19	.10	.08	.09	.09	.08	.78	.37	.30	.21	.17	.22	.01		
48. Other expenses.....	.85	.16	.06	.16	.10	.10	.91	.39	.36	.13	.02	.14	1.67	1.77	1.66
49. General administration joint facilities—Dr.....		.01											.64	.67	.79
50. General administration joint facilities—Cr.....	1.01			1.02	1.02	1.03									1.10
<b>Total general expenses.....</b>	<b>7.01</b>	<b>6.71</b>	<b>6.64</b>	<b>7.45</b>	<b>7.69</b>	<b>7.86</b>	<b>14.86</b>	<b>14.59</b>	<b>15.46</b>	<b>5.74</b>	<b>5.89</b>	<b>6.21</b>	<b>6.13</b>	<b>5.93</b>	<b>5.75</b>
<b>Total operating expenses.....</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
<b>Ratio of operating expenses to operating revenues.....</b>	<b>90.49</b>	<b>85.44</b>	<b>86.76</b>	<b>85.15</b>	<b>85.22</b>	<b>85.89</b>	<b>92.64</b>	<b>71.12</b>	<b>73.93</b>	<b>74.45</b>	<b>47.65</b>	<b>47.28</b>	<b>80.74</b>	<b>80.18</b>	<b>84.34</b>

Account.	Northern Express Co.			Southern Express Co.			United States Express Co.			Wells Fargo & Co.			Western Express Co.		
	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909
<b>I. Maintenance:</b>															
1. Superintendence.....				0.01	0.52	0.24	0.41	0.52	0.01	0.03	0.03	0.05	1.27	0.94	1.17
2. Buildings, fixtures, and grounds.....				.69	.76	.81	.22	.25	.40	.37	.35	.32	.02	.05	.04
3. Office equipment.....	0.28	0.22	0.23	.85					.21	.08	.11	.92	.27	.48	.19
4. Cars—repairs.....											.63	.20			
5. Cars—renewals.....															
6. Cars—depreciation.....										.19	.15	.17			
7. Horses.....	.75	.36	1.11	.49	.80	.47	1.18	.99	1.17	1.40	.58	1.06		.02	.13
8. Vehicles—repairs.....	1.40	1.65	1.27	.65	.08	.67	1.43	1.60	1.54	1.01	.92	.94	.26	.45	.43
9. Vehicles—renewals.....	.04	.03	.07	.20	.14	.22	.07	.25	.12	.09	.10	.32	.10		
10. Stable equipment.....	.22	.30	.33	.27	.29	.25	.31	.46	.31	.45	.56	.46	.09	.08	.08
11. Transportation equipment.....	.09	.10	.09	.06	.18	.10	.12	.12	.29	.27	.49	.62	.02	.02	.03
12. Other expenses.....	.01	.01	.01	.21	.32	.20				.02	.03	.04			
13. Maintaining joint facilities—Dr.....	.01			1.06	1.07	1.07				1.03	1.03	1.03			
14. Maintaining joint facilities—Cr.....	1.38	1.73	1.61												
Total maintenance.....	2.42	1.94	2.50	3.37	3.05	2.89	3.62	4.02	4.05	4.52	3.92	5.07	2.13	2.04	2.07
<b>II. Traffic expenses:</b>															
15. Superintendence.....	.73	.77	.76	1.02	.85	.74	.45	.44	.36	.52	.54	.52	3.29	2.87	2.80
16. Outside agencies.....	1.99	1.30		.21	.22	.26	.56	.55	.40	.77	.62	.54		.02	.06
17. Advertising.....	.03	.01		.22	.19	.14	.05	.09	.02	.10	.09	.06	.27	.04	
18. Traffic associations.....	.14	.12	.12	.05	.05	.04	.05	.16	.08	.05	.11	.08	.42	.32	.24
19. Stationery and printing.....	.84	.80	.63	.56	.17	.17	.36	.52	.30	.34	.36	.30	3.10	2.16	2.01
20. Other expenses.....		.07		.02											
Total traffic expenses.....	3.73	3.07	1.51	2.08	1.48	1.35	1.47	1.76	1.17	1.78	1.72	1.50	7.08	5.41	4.91
<b>III. Transportation expenses:</b>															
21. Superintendence.....	3.67	3.85	4.29	5.87	5.98	6.42	3.57	3.32	3.10	4.77	4.88	5.08	3.14	2.72	2.61
22. Office employees.....	28.94	32.22	32.21	17.86	17.86	18.08	24.40	21.88	21.36	24.44	24.08	23.31	7.92	8.69	9.71
23. Commissions.....	15.32	17.20	17.44	17.02	16.99	16.29	12.83	12.37	12.45	13.83	15.10	15.47	16.54	20.25	20.89
24. Wagon employees.....	14.85	16.89	16.55	4.93	5.04	5.19	15.83	14.33	14.12	13.23	12.42	11.56	4.00	4.51	5.33
25. Office supplies and expenses.....	2.01	2.15	1.95	1.60	1.70	1.86	2.68	2.46	2.36	2.60	2.26	2.53	1.03	1.02	1.82
26. Rent of local offices.....	6.04	6.84	7.14	2.21	2.24	2.32	3.84	4.01	4.45	3.05	2.91	3.00	1.69	2.41	1.86
27. Stable employees.....	.16	.23	.29	.49	.51	.49	2.62	2.52	2.56	1.69	1.52	1.59			
28. Stable supplies and expenses.....	10.21	11.67	10.55	4.63	4.82	4.83	9.88	10.71	10.39	6.86	6.72	6.07	4.74	5.27	5.32
29. Train employees.....	11.65	12.43	12.18	11.09	11.17	11.25	6.82	6.99	7.35	8.68	9.39	9.71	13.08	13.02	12.90
30. Train supplies and expenses.....	.58	.63	1.01	.06	.04	.04	.05	.05	.07	1.04	.65	.71	.03	.16	.02
31. Transfer employees.....	.15	.13	.11	7.44	7.90	8.35	2.08	4.92	5.53	1.60	2.03	2.92	1.01	.86	1.00
32. Transfer expenses.....	.03	.06	.05	.10	.14	.17	.05	.25	.32	.10	.23	.12	.04	.25	.07

1 Credit.



Comparative statement of ratios to total operating expenses of primary expense accounts for the years ended June 30, 1909, 1910, and 1911—Continued.

Account.	Northern Express Co.			Southern Express Co.			United States Express Co.			Wells Fargo & Co.			Western Express Co.		
	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909	1911	1910	1909
III. Transportation expenses—Continued.															
33. Stationery and printing.....	2.43	2.62	2.78												2.59
34. Loss and damage—freight.....	2.07	2.18	2.28												1.87
35. Loss and damage—money.....	.05	.04	.07	3.44	3.52	3.66	2.41	2.41	1.84	2.57	2.65	2.75	3.21	2.49	.31
36. Damage to property.....	.04	.03	.03	.06	.17	.09	.07	.09	.08	.11	.14	.14	.17	.07	.01
37. Injuries to persons.....	.24	.32	.26	.40	.63	.30	.03	.03	.01	.04	.03	.06	.01	.....	.....
38. Other expenses.....	.12	.05	.16	.12	.06	.08	.26	.17	.36	.72	.33	.16	.03	.....	.....
39. Operating joint facilities—Dr.....	1.14	1.02	.74	3.86	4.14	4.20	.....	.....	.....	.28	.18	.01	.02	.81	.06
40. Operating joint facilities—Cr.....	19.65	21.30	20.65	12.04	12.18	12.28	.....	.....	.....	1.16	1.03	1.14	13.75	19.22	20.61
Total transportation expenses.....	88.05	89.28	89.44	83.21	84.18	84.64	89.85	88.37	88.57	86.71	87.29	86.70	80.07	83.57	85.68
IV. General expenses:															
41. Salaries and expenses of general officers.	1.28	1.06	1.13	1.57	1.90	2.28	.83	1.15	1.27	.68	.68	.69	1.76	1.84	1.33
42. Salaries and expenses of clerks and attendants.....	3.33	3.17	4.05	7.21	6.92	6.55	3.02	3.27	3.47	4.51	4.67	4.53	4.55	5.28	5.52
43. General office supplies and expenses.....	.24	.31	.38	.57	.53	.49	.31	.34	.39	.43	.42	.41	.53	.50	.18
44. Law expenses.....	.29	.33	.35	.72	.76	.67	.51	.50	.54	.31	.31	.26	.39	.49	.06
45. Insurance.....	.29	.33	.34	.27	.34	.36	.20	.21	.12	.23	.31	.25	.18	.....	.....
46. Pensions.....	.....	.....	.....	.13	.14	.15	.05	.04	.06	.17	.14	.15	.....	.....	.....
47. Stationery and printing.....	.26	.23	.30	.68	.53	.55	.11	.13	.17	.25	.27	.22	.66	.45	.13
48. Other expenses.....	.08	.32	.....	.17	.13	.06	.03	.21	.19	.41	.27	.22	.53	.06	.01
49. General administration joint facilities—Dr.....	.....	.....	.....	.02	.04	.03	.....	.....	.....	.....	.....	.....	2.12	.36	.11
49. General administration joint facilities—Cr.....	.....	.....	.....	.....	.....	1.02	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total general expenses.....	5.80	5.71	5.55	11.34	11.29	11.12	5.06	5.85	6.21	6.99	7.07	6.73	10.72	8.98	7.34
Total operating expenses.....	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Ratio of operating expenses to operating revenues.....	65.34	56.13	52.66	75.60	72.62	75.81	95.27	94.24	92.45	82.23	76.50	74.07	108.02	72.39	70.39

<sup>1</sup> Credit.

## AVERAGE TERMINAL EXPENSE OF ONE COMPANY.

The table next inserted shows the ratio of the terminal expenses incurred at the local offices of the Adams Express Company to the gross business done at these offices. The gross business represents the total of the business done at all offices during the years named and includes both inbound and outbound charges at each office and is, therefore, a duplication of revenue to the extent of the traffic interchanged between offices of this company. In order to ascertain the average revenue per package and the ratio of terminal expense at each point, however, both inbound and outbound charges must be considered.

The amounts included in terminal expenses covered such items as agents' salaries, hire of clerks, collection and delivery service, light, heat, rent, and maintenance of equipment, but do not include expenses for train messenger service, auditing, general administration, taxes, or maintenance of real property.

The column "Number of pieces handled" shows the number of packages, both inbound and outbound, handled at all offices of the Adams Express Company for the years named, and to the extent that the same package was handled outbound at one office and inbound at another includes duplications. The figures, therefore, are greater than the actual number of packages handled in transit and are of no significance other than to afford a basis for computing the average charge per piece and the average terminal expense per piece. Each piece originating and terminating at an office of the Adams Express Company has been counted twice, but correctly so for the purpose of these averages, as each piece is handled twice in terminal service, and the terminal expense is incurred alike for a piece handled inbound as a piece outbound.

*Ratio of expense to business and average terminal expense per piece of matter handled at all offices of the Adams Express Company.*

Year.	Number of pieces handled.	Ratio of expense to charges.	Average per piece.	
			Charge.	Terminal expense.
		<i>Per cent.</i>	<i>Cents.</i>	<i>Cents.</i>
1904.....	100,677,667	15.7	43.9	6.9
1905.....	107,138,839	15.3	44.4	6.7
1906.....	114,615,217	16.0	45.9	7.3
1907.....	118,577,550	17.6	47.1	8.3
Grand total for 4 years.....	441,009,283			
General averages.....		16.1	45.4	7.3

## EXPRESS RATES AND CHARGES.

Express companies for many years had no standard scale of general special or special commodity rates such as now exists, but specific rates were quoted between points upon application being made to the officials of the companies. With many companies division superintendents were permitted to name rates, which practice resulted in numerous inconsistencies and a generally demoralized situation in so far as general special and commodity rates were concerned.

The situation with respect to merchandise rates was somewhat better because of the fact that those rates were made by the tariff bureaus of the respective companies, and at least a semblance of consistency and uniformity was maintained, especially between common points, where the rates were made by agreement between the companies interested.

When, in 1906, the express companies were brought within the jurisdiction of the Interstate Commerce Commission and compelled to file tariffs with the Commission, they found their tariffs in some respects in an almost chaotic condition. All companies united in organizing a joint tariff bureau in New York City, which bureau employed a large number of men and was engaged for months in reconciling and revising tariffs between all common points of the companies interested. So great was the task undertaken by this bureau that it became necessary for the Commission to extend the time within which tariffs should be filed, and it was not until July, 1907, that complete sets of tariffs were received. Even at the present time the Southern Express Company is still revising and reissuing its rate sheets. The regular tariff bureaus of the respective companies also revised and reissued rates to exclusive offices. No doubt a considerable number of the changes returned by the express companies in answer to the question of the Commission was the result of the revisions and reconciliations above referred to. Other changes were the result of orders issued by the Interstate Commerce Commission and other regulatory bodies, notably the order of the Interstate Commerce Commission in the case of *Kindel v. the Express Companies*, which order caused a reduction in rates from eastern points to a large number of cities and towns in the intermountain country, because of the fact that the merchandise rates between Omaha and Denver, and between Denver and Ogden, were reduced. Those cities being basing points, a large number of rates were affected. General special rates are based upon merchandise rates, and a reduction in the former carries with it a relative reduction in the latter.

Many reductions were undoubtedly caused by changes in the companies which operated over given lines of road. For example, if



express company A operated over the lines of the X and Y railroad company, and express company B operated over the lines of the F and G railroad company, the rates from or to exclusive offices on the respective lines would be the sum of the local rates from or to certain designated transfer points. If express company A should retire from the lines of the X and Y railroad and be succeeded thereon by express company B, the last-named company would establish through rates to all offices on the new line of road from all offices on all lines which it operated and as a general proposition the new through rates would be lower than the sum of the local rates of the two companies had been; general special rates being based on merchandise rates would be correspondingly reduced.

It is believed that a very large number of the reductions in merchandise rates shown in the express companies' returns may be attributed to: (a) Reconciliation of common point rates. (b) Orders issued by regulatory bodies. (c) Changes in express companies operating over given lines of railroads. (d) Construction of new lines of railroad or shortening of existing lines.

Attention is directed to the fact that the lower base rates—notably the 40-cent per 100-pound rate—have been advanced by nearly all companies. Rates may have been reduced in some instances because business failed to move under them. This is especially true of general special matter. Prior to the adoption of a standard scale of general special rates when there was no special commodity rate quoted between two given points, merchandise pound rates were applied to general special matter moving between such points. In such instances the adoption of the general special scale of rates would cause a nominal reduction even though no business might move under either rate. The total number of merchandise rates covered in the express companies' returns to the Commission's order of October 16, 1911, is 66,155. The total number of such rates filed with the Commission is about 450,000,000, so that correct conclusions can not be drawn from returns which cover only about 0.01 per cent of existing rates. It seems to be a fact that the tendency in recent years has been to lower, rather than to raise, base or 100-pound rates and to increase small package rates.

The two following tables present summaries of comparisons of the merchandise and general special, and special commodity rates compiled from returns made by the express companies to questions asked by the Commission, referred to in the preceding paragraph. It will be observed that but 4.72 per cent of the merchandise rates show increases, while 48.38 per cent remain unchanged.

*Merchandise rates—Summary of the comparison of present rates with those previously in effect, as shown by the returns made by the companies named to the Commission's order No. 4198, of Oct. 16, 1911.*

Name of company.	Increases.		Decreases.		Unchanged.		Total number.
	Number.	Per cent of total.	Number.	Per cent of total.	Number.	Per cent of total.	
Adams Express.....	459	4.32	4,433	41.70	5,738	53.98	10,630
American and National Express <sup>1</sup> .....	1,732	3.38	24,072	47.03	25,375	49.59	51,179
Globe Express.....			32	100.00			32
Great Northern Express.....			72	100.00			72
Northern Express <sup>2</sup> .....							
Southern Express.....	802	54.86	660	45.14			1,462
United States Express.....	55	4.55	324	26.82	829	68.63	1,208
Wells Fargo & Co.....	55	3.78	1,400	96.22			1,455
Western Express.....	21	17.95	31	26.50	65	55.55	117
Total.....	3,124	4.72	31,024	46.90	32,007	48.88	66,155

<sup>1</sup> Exclusive of intrastate rates changed by State authority.

<sup>2</sup> No rates quoted in the returns made by this company.

*General special and commodity rates.—Summary of the comparison of present rates with those previously in effect, as shown by the returns made by the companies named, to the Commission's order No. 4198, of Oct. 16, 1911.*

Name of company.	Increases.		Decreases.		Unchanged.		Total.
	Number.	Per cent of total.	Number.	Per cent of total.	Number.	Per cent of total.	Number.
Adams Express <sup>1</sup> .....	738	25.77	2,126	74.23			2,864
American & National Express..	4	.03	12,257	99.66	38	0.31	12,299
Globe Express <sup>2</sup> .....							
Great Northern Express.....	7	5.04	118	84.89	14	10.07	139
Northern Express <sup>2</sup> .....							
Southern Express <sup>3</sup> .....	513	44.19	633	54.52	15	1.29	1,161
United States Express.....	219	7.00	1,907	60.99	1,001	32.01	3,127
Wells Fargo & Co.....	108	10.77	890	88.73	5	.50	1,003
Western Express <sup>2</sup> .....							
Total.....	1,589	7.72	17,931	87.07	1,073	5.21	20,593

<sup>1</sup> Besides the specific rates quoted in these returns, and included in the summary above, the Adams Express Co. submit a table showing changes in certain scale rates between 1907 and 1911. This table shows 19 increases, 57 decreases, and 71 unchanged.

<sup>2</sup> No rates quoted in the returns made by this company.

<sup>3</sup> Besides the specific rates contained in the returns made by this company and included in the summary above, it also submits two tables of general commodity rates based on various merchandise rates, 50 cents to \$8 inclusive. The comparison of the present scale rates with those formerly in effect, as given in these tables, shows 25 increases and 25 decreases.

*Changes in graduate scale.*—An examination of the table of graduated charges on shipments of merchandise as in effect from 1891 to 1911 shows that the changes which have been made in graduated charges under the several base rates may be summarized as follows: During the past 20 years the graduated charges under the lower base rates, that is, 40 cents per 100 pounds to \$1.25 per 100 pounds, have, generally speaking, been increased by percentages varying from 5 per cent to 40 per cent. In only two or three instances have there been decreases in the charges under these rates (40 cents per 100 pounds to \$1.25 per 100 pounds), although there are a few weights



and rates for which the graduated charges remain the same. By reason of the fact that within a comparatively few years additional graduated charges have been provided under base rates such as \$1.40, \$1.60, etc., which formerly were not shown in the tables of graduated charges, reductions have been effected in a comparatively few instances in charges under rates including \$6 per 100 pounds. More than 48 per cent of the increases under rates, \$6 or less, are increases of 10 per cent or more. Between 85 per cent and 90 per cent of the entire volume of express business moves at rates less than \$6 per 100 pounds.

The decreases under base rates, \$6.50 to \$12 inclusive, greatly outnumber the increases. Over 38 per cent of the decreases are less than 10 per cent, and a very considerable number of them are caused by the fact that additional graduates have been inserted, as explained in the preceding paragraph. It is apparent that decreases in graduated charges under rates higher than \$6 per 100 would affect only a comparatively small volume of business.

Effective August 1, 1911, all express companies except the Long Island Express (a department of the Long Island Railroad) withdrew the rule which provided that when shipments exceeding 7 pounds in weight, subject to graduated charges, were carried by two or more companies and the point of origin or destination was an exclusive office, the charge should be determined by graduating for each company carrying. The Long Island Express did not join in the publication of the new rule, with the result that double graduates are still effective from and to exclusive offices on its lines. Also, the elimination of the double graduate does not effect the charges on shipments passing over the lines of two or more companies between points one of which is located in the United States and the other in Canada or Newfoundland when either the shipping point or destination is an exclusive office. The situation with respect to such shipments remains unchanged. The elimination of the double graduate involves a loss of revenue to the express companies amounting to nearly \$1,000,000 annually.

#### AVERAGE HAUL, PACKAGE, AND CHARGE.

The two following tables show traffic averages for the character of traffic moved as determined by analyses of the waybills of the Adams Express Company for August 18, 1909, and waybills of the United States Express Company for December 22, 1909. Perhaps the most significant figures contained in the tables are those which show the average haul per piece between 206 offices of the Adams Express Company and between 218 offices of the United States Express Company. It was found that the average haul between the selected offices of the Adams Express Company was 188.93 miles and the



average between the selected offices of the United States Express Company was 249.87 miles. The difference between the average haul of the two companies may be largely accounted for by the difference in the character of the business handled on the two chosen days. On December 22 a very large proportion of the business handled consists of small packages interchanged as Christmas remembrances between persons in all parts of the country, and probably a larger number of long-distance shipments moves on this date than on any other day in the year. This fact would undoubtedly affect the average haul on that date.

The headings of the columns are self-explanatory, but a word as to the classification of commodities shown may be necessary. The official express classification was followed in assigning the respective classes and the terms used are those employed in that classification.

Merchandise rates apply to all express matter for which no specific rates have been provided and are subject to a table of graduated charges which table provides charges for given weights when the rate per 100 pounds is given. When the rate per 100 pounds is \$1.75 or less the table shows charges for shipments weighing 100 pounds or less. When the rate per 100 pounds exceeds \$1.75 but not \$14.50, the table shows charges for 50 pounds or less. When the rate for 100 pounds exceeds \$14.50 the table shows charges for 20 pounds or less.

Shipments whose weights exceed those named in the table are charged pound rates, i. e., number of pounds multiplied by the rate per 100 pounds and divided by 100, and such shipments are shown against "shipments upon which merchandise pound rates are assessed."

"Scale K" rates apply to shipments of ale, beer, mineral and soda water, etc.

"General special" covers most shipments of a perishable nature, including butter, cheese, meat, poultry, vegetables, and the like.

"Section A" rates apply on articles representing advertising matter distributed gratuitously.

"Section D" rates are applicable to such consignments as printed books, circulars, handbills, pamphlets, and similar articles.

"Section E" applies on packages of merchandise or samples of merchandise when the value of such packages does not exceed \$10 and the charges are prepaid.

Newspapers and magazines are given especially low rates in order to compete with the United States mail.

"Shipments with no charges" represents matter carried free for railway companies and others.

*Analysis of freight revenue of Adams Express Co., as of Aug. 18, 1909.—Statement showing traffic averages for character of traffic moved.*

[This statement covers only the movement of traffic between 206 points for which mileage could be assigned, between which, in general, 100 or more pieces moved. It represents 15.48 per cent of the total number of pieces, 15.70 per cent of the total weight, and 13.98 per cent of the total revenue on business handled as of Aug. 18, 1909.]

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Class.	Average weight per piece.	Average charge per piece.	Average charge per pound.	Average charge per ton.	Average charge per piece per mile.	Average charge per pound per mile.	Average charge per ton per mile.	Average haul of 1 piece.	Average haul of 1 pound.	Number of pieces carried to earn \$1 of revenue.	Number of pounds carried to earn \$1 of revenue.	Number of pieces carried 1 mile to earn \$1 of revenue.	Number of pounds carried 1 mile to earn \$1 of revenue.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Dollars.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Pieces.</i>	<i>Pounds.</i>	<i>Pieces.</i>	<i>Pounds.</i>
Shipments upon which graduate charges were assessed.....	17.47	40.69	2.33	46.58	.22	0.1428	28.56	188.03	163.09	2.46	42.94	462.13	7,002.92
Shipments upon which merchandise pound rates were assessed.....	87.69	79.18	.90	18.06	.35	.0518	10.36	225.46	174.22	1.26	110.75	284.75	19,294.51
Total merchandise.....	31.34	48.29	1.54	30.82	.24	.0911	18.21	195.42	169.24	2.07	64.90	404.70	10,982.92
Scale K.....	60.10	30.21	.50	10.05	.59	.0893	17.86	51.16	56.26	3.31	198.91	169.32	11,190.78
Returned empty carriers.....	21.83	8.90	.41	8.15	.16	.0718	14.35	56.47	56.81	11.24	245.30	634.58	13,694.64
General specials.....	61.09	37.19	.61	12.18	.30	.0423	8.47	123.94	143.80	2.69	164.26	333.24	23,020.84
Section A.....	16.72	38.21	2.29	45.71	.09	.0653	13.06	414.53	350.09	2.61	43.74	1,094.68	15,313.78
Section D.....	2.43	19.44	8.01	160.11	.06	.1840	36.80	343.29	484.99	5.14	12.49	1,764.71	3,433.65
Section E.....	1.11	17.93	16.09	321.71	.06	.4901	98.02	322.35	328.18	5.58	6.22	1,797.40	2,040.25
Newspapers and magazines.....	21.06	21.93	1.04	20.86	.10	.0453	9.06	215.67	230.25	4.55	95.83	981.45	22,066.04
Shipments with no charges.....	37.90	.....	.....	.....	.....	.....	.....	194.07	198.23	.....	.....	.....	.....
Unassignable to the foregoing classes.....	65.88	49.22	.75	14.94	.50	.0911	18.22	98.00	82.02	2.03	133.84	199.08	10,977.22
Total other than merchandise.....	46.71	34.17	.73	14.63	.20	.0454	9.08	169.20	161.12	2.93	136.70	495.20	22,025.76
Total.....	35.14	44.70	1.27	25.49	.24	.0765	15.30	188.93	166.57	2.23	78.45	421.75	13,057.37

*Analysis of freight revenue of United States Express Co., as of Dec. 22, 1909.—Statement showing traffic averages for character of traffic moved.*

[This statement covers only the movement of traffic between 218 points for which mileage could be assigned, between which, in general, 100 or more pieces moved. It represents 14.66 per cent of the total number of pieces, 13.77 per cent of the total weight, and 13.26 per cent of the total revenue on business handled as of Dec. 22, 1909.]

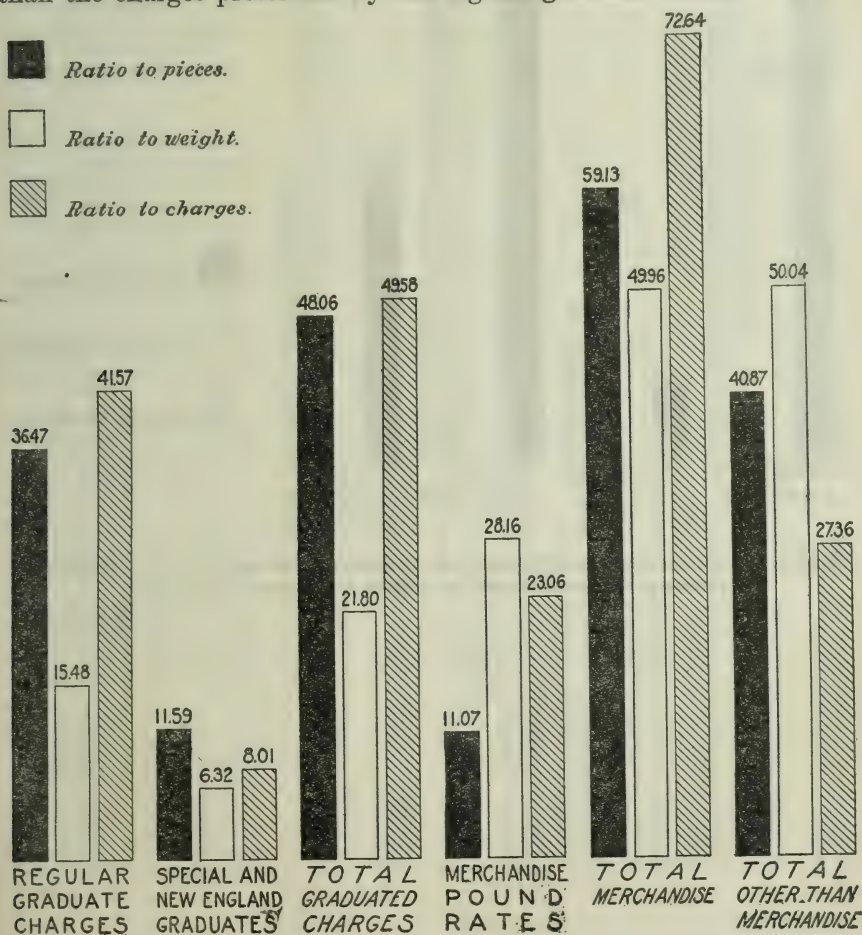
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Class.	Average weight per piece.	Average charge per piece.	Average charge per pound.	Average charge per ton.	Average charge per piece per mile.	Average charge per pound per mile.	Average charge per ton per mile.	Average haul of 1 piece.	Average haul of 1 pound.	Number of pieces carried to earn \$1 of revenue.	Number of pounds carried to earn \$1 of revenue.	Number of pieces carried 1 mile to earn \$1 of revenue.	Number of pounds carried 1 mile to earn \$1 of revenue.
Shipments upon which graduated charges were assessed.....	Pounds. 13.11	Cents. 42.58	Cents. 3.25	Dollars. 64.94	Cents. 0.19	Mills. 0.1723	Cents. 34.46	Miles. 230.16	Miles. 188.42	Pieces. 2.35	Pounds. 30.80	Pieces. 540.52	Pounds. 5,802.68
Shipments upon which merchandise pound rates were assessed.....	89.01	93.81	1.05	21.08	.35	.0479	9.58	271.61	220.03	1.07	94.88	289.54	20,876.76
Total merchandise.....	21.89	48.51	2.22	44.32	.21	.1090	21.80	234.96	203.28	2.06	45.13	484.39	9,174.10
Scale K.....	62.65	72.00	1.15	22.99	.47	.0535	10.70	152.88	214.88	1.39	87.01	212.33	18,696.57
Returned empty carriers.....	37.21	15.21	.41	8.18	.12	.0373	7.46	122.35	109.47	6.57	244.61	804.21	26,776.51
General specials.....	66.36	46.97	.71	14.16	.21	.0390	7.80	223.44	181.42	2.13	141.27	475.67	25,628.23
Section A.....	9.16	36.76	4.01	80.24	.05	.0592	11.85	787.49	677.30	2.72	24.92	2,142.33	16,880.96
Section D.....	2.80	22.21	7.94	158.86	.05	.1500	30.00	492.83	529.88	4.50	12.59	1,904.02	6,671.02
Section E.....	1.11	18.09	16.27	325.43	.06	.5340	106.80	279.83	304.70	5.53	6.15	1,546.84	1,872.57
Newspapers and magazines.....	26.97	27.53	1.02	20.41	.15	.0627	10.54	188.83	183.72	3.63	97.99	685.98	18,981.92
Shipments with no charges.....	34.56	.....	.....	.....	.....	.....	.....	283.72	677.51	.....	.....	.....	.....
Unassignable to the foregoing classes.....	22.51	47.69	2.12	42.37	.16	.0882	17.64	281.04	240.24	2.10	47.20	589.36	11,340.39
Total other than merchandise.....	31.53	32.22	1.02	20.44	.10	.0474	9.48	308.75	215.72	3.10	97.85	958.19	21,107.12
Total.....	23.84	45.23	1.90	37.95	.18	.0918	18.37	249.87	206.60	2.21	52.71	552.47	10,888.95



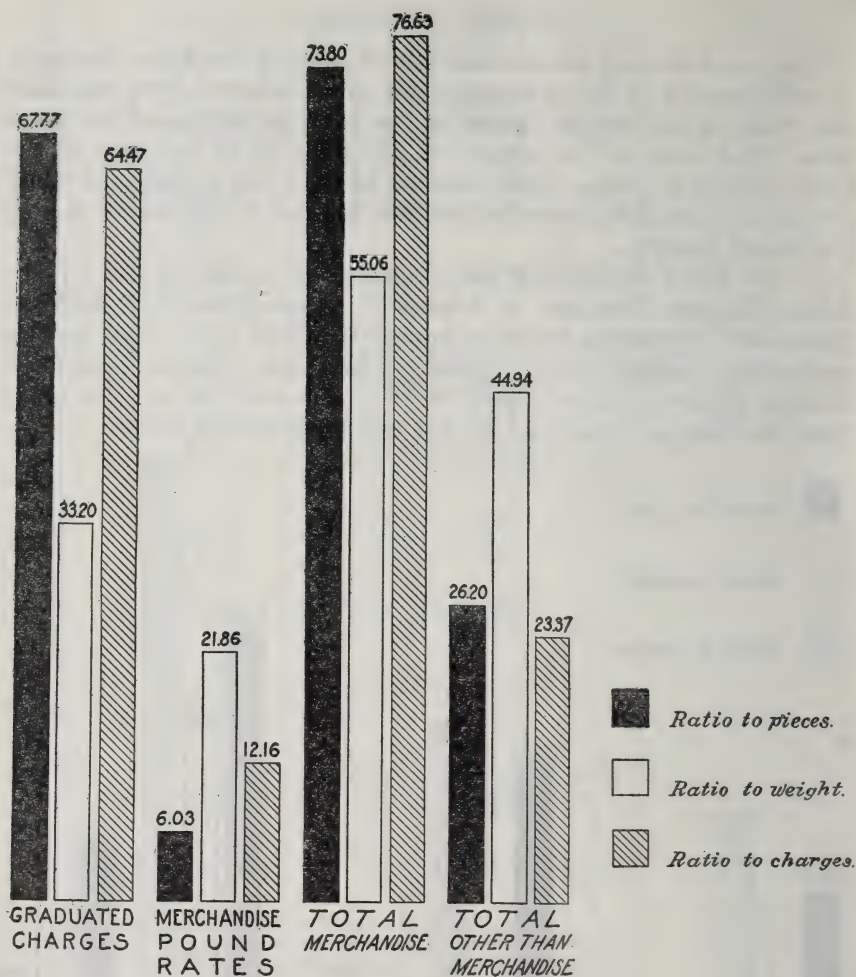
## ANALYSIS OF TRAFFIC.

The two following charts illustrate in graphic form the character of traffic moved by the two companies on the selected days and show the ratios of the several classes to the total traffic moved on those days. For example, on December 22, 1909, 67.77 per cent of the total number of pieces, 33.20 per cent of the total weight, and 64.47 per cent of the total revenue received applied to shipments taking graduated charges.

In the chart illustrating the character of traffic moved by the Adams Express Company on August 18, "special and New England graduates" represents business moved to which other than regular graduated charges were applied. There are special graduated charges in use in certain sections of the country which are lower than the charges prescribed by the regular graduate table.



Character of traffic moved by Adams Express Company, as of August 18, 1909. Chart showing percentage of shipments moved and revenue derived under classes shown.



Character of traffic moved by United States Express Company, as of December 22, 1909. Chart showing percentage of shipments moved and revenue derived under classes shown.

24 I. C. C.

TABLE I.—*Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein.*

[EXPLANATION.—This table is compiled by deducting from the so-called graduated charge (column 1) the amount of the rate per pound multiplied by the number of pounds (column 2); the remainder or difference (column 3) is, therefore, the amount added to the proportionate rate to make up the graduate charge. This amount is added on the theory that some service of value is not provided for in the proportionate pound rate, viz, the terminal expense. Comparisons will show a wide variance in this factor of terminal expense.]

	When merchandise rate per 100 pounds is—								
	\$0.40.			\$0.50.			\$0.60.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	25.00	0.40	24.60	25.00	0.50	24.50	25.00	0.60	24.40
Over 1 and not over 2 pounds.....	25.00	.80	24.20	25.00	1.00	24.00	25.00	1.20	23.80
Over 2 and not over 3 pounds.....	25.00	1.20	23.80	25.00	1.50	23.50	25.00	1.80	23.20
Over 3 and not over 4 pounds.....	25.00	1.60	23.40	25.00	2.00	23.00	30.00	2.40	27.60
Over 4 and not over 5 pounds.....	25.00	2.00	23.00	25.00	2.50	22.50	30.00	3.00	27.00
Over 5 and not over 6 pounds.....	30.00	2.40	27.60	30.00	3.00	27.00	35.00	3.60	31.40
Over 6 and not over 7 pounds.....	30.00	2.80	27.20	30.00	3.50	26.50	35.00	4.20	30.80
Over 7 and not over 8 pounds.....	30.00	3.20	26.80	30.00	4.00	26.00	35.00	4.80	30.20
Over 8 and not over 9 pounds.....	30.00	3.60	26.40	30.00	4.50	25.50	35.00	5.20	29.80
Over 9 and not over 10 pounds.....	30.00	4.00	26.00	30.00	5.00	25.00	35.00	6.00	29.00
Over 10 and not over 11 pounds....	30.00	4.40	25.60	30.00	5.50	24.50	35.00	6.60	28.40
Over 11 and not over 12 pounds....	30.00	4.80	25.20	30.00	6.00	24.00	35.00	7.20	27.80
Over 12 and not over 13 pounds....	30.00	5.20	24.80	30.00	6.50	23.50	35.00	7.80	27.20
Over 13 and not over 14 pounds....	30.00	5.60	24.40	30.00	7.00	23.00	35.00	8.40	26.60
Over 14 and not over 15 pounds....	30.00	6.00	24.00	30.00	7.50	22.50	35.00	9.00	26.00
Over 15 and not over 16 pounds....	30.00	6.40	23.60	30.00	8.00	22.00	35.00	9.60	25.40
Over 16 and not over 17 pounds....	30.00	6.80	23.20	30.00	8.50	21.50	35.00	10.20	24.80
Over 17 and not over 18 pounds....	30.00	7.20	22.80	30.00	9.00	21.00	35.00	10.80	24.20
Over 18 and not over 19 pounds....	30.00	7.60	22.40	30.00	9.50	20.50	35.00	11.40	23.60
Over 19 and not over 20 pounds....	30.00	8.00	22.00	30.00	10.00	20.00	35.00	12.00	23.00
Over 20 and not over 21 pounds....	35.00	8.40	26.60	35.00	10.50	24.50	40.00	12.60	27.40
Over 21 and not over 22 pounds....	35.00	8.80	26.20	35.00	11.00	24.00	40.00	13.20	26.80
Over 22 and not over 23 pounds....	35.00	9.20	25.80	35.00	11.50	23.50	40.00	13.80	26.20
Over 23 and not over 24 pounds....	35.00	9.60	25.40	35.00	12.00	23.00	40.00	14.40	25.60
Over 24 and not over 25 pounds....	35.00	10.00	25.00	35.00	12.50	22.50	40.00	15.00	25.00
Over 25 and not over 26 pounds....	35.00	10.40	24.60	40.00	13.00	27.00	45.00	15.60	29.40
Over 26 and not over 27 pounds....	35.00	10.80	24.20	40.00	13.50	26.50	45.00	16.20	28.80
Over 27 and not over 28 pounds....	35.00	11.20	23.80	40.00	14.00	26.00	45.00	16.80	28.20
Over 28 and not over 29 pounds....	35.00	11.60	23.40	40.00	14.50	25.50	45.00	17.40	27.60
Over 29 and not over 30 pounds....	35.00	12.00	23.00	40.00	15.00	25.00	45.00	18.00	27.00
Over 30 and not over 31 pounds....	40.00	12.40	27.60	40.00	15.50	24.50	45.00	18.60	26.40
Over 31 and not over 32 pounds....	40.00	12.80	27.20	40.00	16.00	24.00	45.00	19.20	25.80
Over 32 and not over 33 pounds....	40.00	13.20	26.80	40.00	16.50	23.50	45.00	19.80	25.20
Over 33 and not over 34 pounds....	40.00	13.60	26.40	40.00	17.00	23.00	45.00	20.40	24.60
Over 34 and not over 35 pounds....	40.00	14.00	26.00	40.00	17.50	22.50	45.00	21.00	24.00
Over 35 and not over 36 pounds....	40.00	14.40	25.60	40.00	18.00	22.00	50.00	21.60	28.40
Over 36 and not over 37 pounds....	40.00	14.80	25.20	40.00	18.50	21.50	50.00	22.20	27.80
Over 37 and not over 38 pounds....	40.00	15.20	24.80	40.00	19.00	21.00	50.00	22.80	27.20
Over 38 and not over 39 pounds....	40.00	15.60	24.40	40.00	19.50	20.50	50.00	23.40	26.60
Over 39 and not over 40 pounds....	40.00	16.00	24.00	40.00	20.00	20.00	50.00	24.00	26.00
Over 40 and not over 41 pounds....	40.00	16.40	23.60	40.00	20.50	19.50	50.00	24.60	25.40
Over 41 and not over 42 pounds....	40.00	16.80	23.20	40.00	21.00	19.00	50.00	25.20	24.80
Over 42 and not over 43 pounds....	40.00	17.20	22.80	40.00	21.50	18.50	50.00	25.80	24.20
Over 43 and not over 44 pounds....	40.00	17.60	22.40	40.00	22.00	18.00	50.00	26.40	23.60
Over 44 and not over 45 pounds....	40.00	18.00	22.00	40.00	22.50	17.50	50.00	27.00	23.00
Over 45 and not over 46 pounds....	40.00	18.40	21.60	45.00	23.00	22.00	55.00	27.60	27.40
Over 46 and not over 47 pounds....	40.00	18.80	21.20	45.00	23.50	21.50	55.00	28.20	26.80
Over 47 and not over 48 pounds....	40.00	19.20	20.80	45.00	24.00	21.00	55.00	28.80	26.20
Over 48 and not over 49 pounds....	40.00	19.60	20.40	45.00	24.50	20.50	55.00	29.40	25.60
Over 49 and not over 50 pounds....	40.00	20.00	20.00	45.00	25.00	20.00	55.00	30.00	25.00



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$0.40.			\$0.50.			\$0.60.		
	1	2	3	1	2	3	1	2	3
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Over 50 and not over 51 pounds....	40.00	20.40	19.60	50.00	25.50	24.50	60.00	30.60	29.40
Over 51 and not over 52 pounds....	40.00	20.80	19.20	50.00	26.00	24.00	60.00	31.20	28.80
Over 52 and not over 53 pounds....	40.00	21.20	18.80	50.00	26.50	23.50	60.00	31.80	28.20
Over 53 and not over 54 pounds....	40.00	21.60	18.40	50.00	27.00	23.00	60.00	32.40	27.60
Over 54 and not over 55 pounds....	40.00	22.00	18.00	50.00	27.50	22.50	60.00	33.00	27.00
Over 55 and not over 56 pounds....	40.00	22.40	17.60	50.00	28.00	22.00	60.00	33.60	26.40
Over 56 and not over 57 pounds....	40.00	22.80	17.20	50.00	28.50	21.50	60.00	34.20	25.80
Over 57 and not over 58 pounds....	40.00	23.20	16.80	50.00	29.00	21.00	60.00	34.80	25.20
Over 58 and not over 59 pounds....	40.00	23.60	16.40	50.00	29.50	20.50	60.00	35.40	24.60
Over 59 and not over 60 pounds....	40.00	24.00	16.00	50.00	30.00	20.00	60.00	36.00	24.00
Over 60 and not over 61 pounds....	40.00	24.40	15.60	50.00	30.50	19.50	60.00	36.60	23.40
Over 61 and not over 62 pounds....	40.00	24.80	15.20	50.00	31.00	19.00	60.00	37.20	22.80
Over 62 and not over 63 pounds....	40.00	25.20	14.80	50.00	31.50	18.50	60.00	37.80	22.20
Over 63 and not over 64 pounds....	40.00	25.60	14.40	50.00	32.00	18.00	60.00	38.40	21.60
Over 64 and not over 65 pounds....	40.00	26.00	14.00	50.00	32.50	17.50	60.00	39.00	21.00
Over 65 and not over 66 pounds....	40.00	26.40	13.60	50.00	33.00	17.00	60.00	39.60	20.40
Over 66 and not over 67 pounds....	40.00	26.80	13.20	50.00	33.50	16.50	60.00	40.20	19.80
Over 67 and not over 68 pounds....	40.00	27.20	12.80	50.00	34.00	16.00	60.00	40.80	19.20
Over 68 and not over 69 pounds....	40.00	27.60	12.40	50.00	34.50	15.50	60.00	41.40	18.60
Over 69 and not over 70 pounds....	40.00	28.00	12.00	50.00	35.00	15.00	60.00	42.00	18.00
Over 70 and not over 71 pounds....	40.00	28.40	11.60	50.00	35.50	14.50	60.00	42.60	17.40
Over 71 and not over 72 pounds....	40.00	28.80	11.20	50.00	36.00	14.00	60.00	43.20	16.80
Over 72 and not over 73 pounds....	40.00	29.20	10.80	50.00	36.50	13.50	60.00	43.80	16.20
Over 73 and not over 74 pounds....	40.00	29.60	10.40	50.00	37.00	13.00	60.00	44.40	15.60
Over 74 and not over 75 pounds....	40.00	30.00	10.00	50.00	37.50	12.50	60.00	45.00	15.00
Over 75 and not over 76 pounds....	40.00	30.40	9.60	50.00	38.00	12.00	60.00	45.60	14.40
Over 76 and not over 77 pounds....	40.00	30.80	9.20	50.00	38.50	11.50	60.00	46.20	13.80
Over 77 and not over 78 pounds....	40.00	31.20	8.80	50.00	39.00	11.00	60.00	46.80	13.20
Over 78 and not over 79 pounds....	40.00	31.60	8.40	50.00	39.50	10.50	60.00	47.40	12.60
Over 79 and not over 80 pounds....	40.00	32.00	8.00	50.00	40.00	10.00	60.00	48.00	12.00
Over 80 and not over 81 pounds....	40.00	32.40	7.60	50.00	40.50	9.50	60.00	48.60	11.40
Over 81 and not over 82 pounds....	40.00	32.80	7.20	50.00	41.00	9.00	60.00	49.20	10.80
Over 82 and not over 83 pounds....	40.00	33.20	6.80	50.00	41.50	8.50	60.00	49.80	10.20
Over 83 and not over 84 pounds....	40.00	33.60	6.40	50.00	42.00	8.00	60.00	50.40	9.60
Over 84 and not over 85 pounds....	40.00	34.00	6.00	50.00	42.50	7.50	60.00	51.00	9.00
Over 85 and not over 86 pounds....	40.00	34.40	5.60	50.00	43.00	7.00	60.00	51.60	8.40
Over 86 and not over 87 pounds....	40.00	34.80	5.20	50.00	43.50	6.50	60.00	52.20	7.80
Over 87 and not over 88 pounds....	40.00	35.20	4.80	50.00	44.00	6.00	60.00	52.80	7.20
Over 88 and not over 89 pounds....	40.00	35.60	4.40	50.00	44.50	5.50	60.00	53.40	6.60
Over 89 and not over 90 pounds....	40.00	36.00	4.00	50.00	45.00	5.00	60.00	54.00	6.00
Over 90 and not over 91 pounds....	40.00	36.40	3.60	50.00	45.50	4.50	60.00	54.60	5.40
Over 91 and not over 92 pounds....	40.00	36.80	3.20	50.00	46.00	4.00	60.00	55.20	4.80
Over 92 and not over 93 pounds....	40.00	37.20	2.80	50.00	46.50	3.50	60.00	55.80	4.20
Over 93 and not over 94 pounds....	40.00	37.60	2.40	50.00	47.00	3.00	60.00	56.40	3.60
Over 94 and not over 95 pounds....	40.00	38.00	2.00	50.00	47.50	2.50	60.00	57.00	3.00
Over 95 and not over 96 pounds....	40.00	38.40	1.60	50.00	48.00	2.00	60.00	57.60	2.40
Over 96 and not over 97 pounds....	40.00	38.80	1.20	50.00	48.50	1.50	60.00	58.20	1.80
Over 97 and not over 98 pounds....	40.00	39.20	.80	50.00	49.00	1.00	60.00	58.80	1.20
Over 98 and not over 99 pounds....	40.00	39.60	.40	50.00	49.50	.50	60.00	59.40	.60
Over 99 and not over 100 pounds....	40.00	40.00	.....	50.00	50.00	.....	60.00	60.00	.....
Total.....	.....	.....	1,704.00	.....	.....	1,750.00	.....	2,046.30	.....
Average.....	.....	.....	17.04	.....	.....	17.50	.....	20.46	.....

TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$0.75.			\$0.90.			\$1.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	25.00	0.75	24.25	25.00	0.90	24.10	25.00	1.00	24.00
Over 1 and not over 2 pounds.....	30.00	1.50	28.50	30.00	1.80	28.20	30.00	2.00	28.00
Over 2 and not over 3 pounds.....	30.00	2.25	27.75	30.00	2.70	27.30	30.00	3.00	27.00
Over 3 and not over 4 pounds.....	30.00	3.00	27.00	35.00	3.60	31.40	35.00	4.00	31.00
Over 4 and not over 5 pounds.....	35.00	3.75	31.25	40.00	4.50	35.50	40.00	5.00	35.00
Over 5 and not over 6 pounds.....	35.00	4.50	30.50	40.00	5.40	34.60	40.00	6.00	34.00
Over 6 and not over 7 pounds.....	35.00	5.25	29.75	40.00	6.30	33.70	40.00	7.00	33.00
Over 7 and not over 8 pounds.....	40.00	6.00	34.00	45.00	7.20	37.80	45.00	8.00	37.00
Over 8 and not over 9 pounds.....	40.00	6.75	33.25	45.00	8.10	36.90	45.00	9.00	36.00
Over 9 and not over 10 pounds.....	40.00	7.50	32.50	45.00	9.00	36.00	45.00	10.00	35.00
Over 10 and not over 11 pounds....	40.00	8.25	31.75	45.00	9.90	35.10	45.00	11.00	34.00
Over 11 and not over 12 pounds....	40.00	9.00	31.00	45.00	10.80	34.20	45.00	12.00	33.00
Over 12 and not over 13 pounds....	40.00	9.75	30.25	45.00	11.70	33.30	45.00	13.00	32.00
Over 13 and not over 14 pounds....	40.00	10.50	29.50	45.00	12.60	32.40	45.00	14.00	31.00
Over 14 and not over 15 pounds....	40.00	11.25	28.75	45.00	13.50	31.50	45.00	15.00	30.00
Over 15 and not over 16 pounds....	40.00	12.00	28.00	50.00	14.40	35.60	50.00	16.00	34.00
Over 16 and not over 17 pounds....	40.00	12.75	27.25	50.00	15.30	34.70	50.00	17.00	33.00
Over 17 and not over 18 pounds....	40.00	13.50	26.50	50.00	16.20	33.80	50.00	18.00	32.00
Over 18 and not over 19 pounds....	40.00	14.25	25.75	50.00	17.10	32.90	50.00	19.00	31.00
Over 19 and not over 20 pounds....	40.00	15.00	25.00	50.00	18.00	32.00	50.00	20.00	30.00
Over 20 and not over 21 pounds....	45.00	15.75	29.25	55.00	18.90	36.10	55.00	21.00	34.00
Over 21 and not over 22 pounds....	45.00	16.50	28.50	55.00	19.80	35.20	55.00	22.00	33.00
Over 22 and not over 23 pounds....	45.00	17.25	27.75	55.00	20.70	34.30	55.00	23.00	32.00
Over 23 and not over 24 pounds....	45.00	18.00	27.00	55.00	21.60	33.40	55.00	24.00	31.00
Over 24 and not over 25 pounds....	45.00	18.75	26.25	55.00	22.50	32.50	55.00	25.00	30.00
Over 25 and not over 26 pounds....	50.00	19.50	30.50	60.00	23.40	36.60	60.00	26.00	34.00
Over 26 and not over 27 pounds....	50.00	20.25	29.75	60.00	24.30	35.70	60.00	27.00	33.00
Over 27 and not over 28 pounds....	50.00	21.00	29.00	60.00	25.20	34.80	60.00	28.00	32.00
Over 28 and not over 29 pounds....	50.00	21.75	28.25	60.00	26.10	33.90	60.00	29.00	31.00
Over 29 and not over 30 pounds....	50.00	22.50	27.50	60.00	27.00	33.00	60.00	30.00	30.00
Over 30 and not over 31 pounds....	50.00	23.25	26.75	65.00	27.90	37.10	65.00	31.00	34.00
Over 31 and not over 32 pounds....	50.00	24.00	26.00	65.00	28.80	36.20	65.00	32.00	33.00
Over 32 and not over 33 pounds....	50.00	24.75	25.25	65.00	29.70	35.30	65.00	33.00	32.00
Over 33 and not over 34 pounds....	50.00	25.50	24.50	65.00	30.60	34.40	65.00	34.00	31.00
Over 34 and not over 35 pounds....	50.00	26.25	23.75	65.00	31.50	33.50	65.00	35.00	30.00
Over 35 and not over 36 pounds....	55.00	27.00	28.00	70.00	32.40	37.60	70.00	36.00	34.00
Over 36 and not over 37 pounds....	55.00	27.75	27.25	70.00	33.30	36.70	70.00	37.00	33.00
Over 37 and not over 38 pounds....	55.00	28.50	26.50	70.00	34.20	35.80	70.00	38.00	32.00
Over 38 and not over 39 pounds....	55.00	29.25	25.75	70.00	35.10	34.90	70.00	39.00	31.00
Over 39 and not over 40 pounds....	55.00	30.00	25.00	70.00	36.00	34.00	70.00	40.00	30.00
Over 40 and not over 41 pounds....	60.00	30.75	29.25	75.00	36.90	38.10	75.00	41.00	34.00
Over 41 and not over 42 pounds....	60.00	31.50	28.50	75.00	37.80	37.20	75.00	42.00	33.00
Over 42 and not over 43 pounds....	60.00	32.25	27.75	75.00	38.70	36.30	75.00	43.00	32.00
Over 43 and not over 44 pounds....	60.00	33.00	27.00	75.00	39.60	35.40	75.00	44.00	31.00
Over 44 and not over 45 pounds....	60.00	33.75	26.25	75.00	40.50	34.50	75.00	45.00	30.00
Over 45 and not over 46 pounds....	60.00	34.50	25.50	75.00	41.40	33.60	80.00	46.00	34.00
Over 46 and not over 47 pounds....	60.00	35.25	24.75	75.00	42.30	32.70	80.00	47.00	33.00
Over 47 and not over 48 pounds....	60.00	36.00	24.00	75.00	43.20	31.80	80.00	48.00	32.00
Over 48 and not over 49 pounds....	60.00	36.75	23.25	75.00	44.10	30.90	80.00	49.00	31.00
Over 49 and not over 50 pounds....	60.00	37.50	22.50	75.00	45.00	30.00	80.00	50.00	30.00



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$0.75.			\$0.90.			\$1.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Over 50 and not over 51 pounds....	65.00	38.25	26.75	80.00	45.90	39.10	85.00	51.00	34.00
Over 51 and not over 52 pounds....	65.00	39.00	26.00	80.00	46.80	38.20	85.00	52.00	33.00
Over 52 and not over 53 pounds....	65.00	39.75	25.25	80.00	47.70	37.30	85.00	53.00	32.00
Over 53 and not over 54 pounds....	65.00	40.50	24.50	80.00	48.60	36.40	85.00	54.00	31.00
Over 54 and not over 55 pounds....	65.00	41.25	23.75	80.00	49.50	35.50	85.00	55.00	30.00
Over 55 and not over 56 pounds....	70.00	42.00	28.00	85.00	50.40	39.60	90.00	56.00	34.00
Over 56 and not over 57 pounds....	70.00	42.75	27.25	85.00	51.30	38.70	90.00	57.00	33.00
Over 57 and not over 58 pounds....	70.00	43.50	26.50	85.00	52.20	37.80	90.00	58.00	32.00
Over 58 and not over 59 pounds....	70.00	44.25	25.75	85.00	53.10	36.90	90.00	59.00	31.00
Over 59 and not over 60 pounds....	70.00	45.00	25.00	85.00	54.00	36.00	90.00	60.00	30.00
Over 60 and not over 61 pounds....	75.00	45.75	29.25	90.00	54.90	35.10	90.00	61.00	29.00
Over 61 and not over 62 pounds....	75.00	46.50	28.50	90.00	55.80	34.20	90.00	62.00	28.00
Over 62 and not over 63 pounds....	75.00	47.25	27.75	90.00	56.70	33.30	90.00	63.00	27.00
Over 63 and not over 64 pounds....	75.00	48.00	27.00	90.00	57.60	32.40	90.00	64.00	26.00
Over 64 and not over 65 pounds....	75.00	48.75	26.25	90.00	58.50	31.50	90.00	65.00	25.00
Over 65 and not over 66 pounds....	75.00	49.50	25.50	90.00	59.40	30.60	100.00	66.00	34.00
Over 66 and not over 67 pounds....	75.00	50.25	24.75	90.00	60.30	29.70	100.00	67.00	33.00
Over 67 and not over 68 pounds....	75.00	51.00	24.00	90.00	61.20	28.80	100.00	68.00	32.00
Over 68 and not over 69 pounds....	75.00	51.75	23.25	90.00	62.10	27.90	100.00	69.00	31.00
Over 69 and not over 70 pounds....	75.00	52.50	22.50	90.00	63.00	27.00	100.00	70.00	30.00
Over 70 and not over 71 pounds....	75.00	53.25	21.75	90.00	63.90	26.10	100.00	71.00	29.00
Over 71 and not over 72 pounds....	75.00	54.00	21.00	90.00	64.80	25.20	100.00	72.00	28.00
Over 72 and not over 73 pounds....	75.00	54.75	20.25	90.00	65.70	24.30	100.00	73.00	27.00
Over 73 and not over 74 pounds....	75.00	55.50	19.50	90.00	66.60	23.40	100.00	74.00	26.00
Over 74 and not over 75 pounds....	75.00	56.25	18.75	90.00	67.50	22.50	100.00	75.00	25.00
Over 75 and not over 76 pounds....	75.00	57.00	18.00	90.00	68.40	21.60	100.00	76.00	24.00
Over 76 and not over 77 pounds....	75.00	57.75	17.25	90.00	69.30	20.70	100.00	77.00	23.00
Over 77 and not over 78 pounds....	75.00	58.50	16.50	90.00	70.20	19.80	100.00	78.00	22.00
Over 78 and not over 79 pounds....	75.00	59.25	15.75	90.00	71.10	18.90	100.00	79.00	21.00
Over 79 and not over 80 pounds....	75.00	60.00	15.00	90.00	72.00	18.00	100.00	80.00	20.00
Over 80 and not over 81 pounds....	75.00	60.75	14.25	90.00	72.90	17.10	100.00	81.00	19.00
Over 81 and not over 82 pounds....	75.00	61.50	13.50	90.00	73.80	16.20	100.00	82.00	18.00
Over 82 and not over 83 pounds....	75.00	62.25	12.75	90.00	74.70	15.30	100.00	83.00	17.00
Over 83 and not over 84 pounds....	75.00	63.00	12.00	90.00	75.60	14.40	100.00	84.00	16.00
Over 84 and not over 85 pounds....	75.00	63.75	11.25	90.00	76.50	13.50	100.00	85.00	15.00
Over 85 and not over 86 pounds....	75.00	64.50	10.50	90.00	77.40	12.60	100.00	86.00	14.00
Over 86 and not over 87 pounds....	75.00	65.25	9.75	90.00	78.30	11.70	100.00	87.00	13.00
Over 87 and not over 88 pounds....	75.00	66.00	9.00	90.00	79.20	10.80	100.00	88.00	12.00
Over 88 and not over 89 pounds....	75.00	66.75	8.25	90.00	80.10	9.90	100.00	89.00	11.00
Over 89 and not over 90 pounds....	75.00	67.50	7.50	90.00	81.00	9.00	100.00	90.00	10.00
Over 90 and not over 91 pounds....	75.00	68.25	6.75	90.00	81.90	8.10	100.00	91.00	9.00
Over 91 and not over 92 pounds....	75.00	69.00	6.00	90.00	82.80	7.20	100.00	92.00	8.00
Over 92 and not over 93 pounds....	75.00	69.75	5.25	90.00	83.70	6.30	100.00	93.00	7.00
Over 93 and not over 94 pounds....	75.00	70.50	4.50	90.00	84.60	5.40	100.00	94.00	6.00
Over 94 and not over 95 pounds....	75.00	71.25	3.75	90.00	85.50	4.50	100.00	95.00	5.00
Over 95 and not over 96 pounds....	75.00	72.00	3.00	90.00	86.40	3.60	100.00	96.00	4.00
Over 96 and not over 97 pounds....	75.00	72.75	2.25	90.00	87.30	2.70	100.00	97.00	3.00
Over 97 and not over 98 pounds....	75.00	73.50	1.50	90.00	88.20	1.80	100.00	98.00	2.00
Over 98 and not over 99 pounds....	75.00	74.25	.75	90.00	89.10	.90	100.00	99.00	1.00
Over 99 and not over 100 pounds....	75.00	75.00	.....	90.00	90.00	.....	100.00	100.00	.....
Total.....	.....	.....	2,227.50	.....	.....	2,805.00	.....	.....	2,650.00
Average.....	.....	.....	22.27½	.....	.....	28.05	.....	.....	26.50



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$1.10.			\$1.25.			\$1.40.		
	1	2	3	1	2	3	1	2	3
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Packages not over 1 pound.....	25.00	1.10	23.90	25.00	1.25	23.75	25.00	1.40	23.60
Over 1 and not over 2 pounds.....	30.00	2.20	27.80	30.00	2.50	27.50	30.00	2.80	27.20
Over 2 and not over 3 pounds.....	35.00	3.30	31.70	35.00	3.75	31.25	35.00	4.20	30.80
Over 3 and not over 4 pounds.....	35.00	4.40	30.60	35.00	5.00	30.00	40.00	5.60	34.40
Over 4 and not over 5 pounds.....	40.00	5.50	34.50	40.00	6.25	33.75	45.00	7.00	38.00
Over 5 and not over 6 pounds.....	45.00	6.60	38.40	45.00	7.50	37.50	50.00	8.40	41.60
Over 6 and not over 7 pounds.....	45.00	7.70	37.30	45.00	8.75	36.25	50.00	9.80	40.20
Over 7 and not over 8 pounds.....	50.00	8.80	41.20	50.00	10.00	40.00	55.00	11.20	43.80
Over 8 and not over 9 pounds.....	50.00	9.90	40.10	50.00	11.25	38.75	55.00	12.60	42.40
Over 9 and not over 10 pounds.....	50.00	11.00	39.00	50.00	12.50	37.50	55.00	14.00	41.00
Over 10 and not over 11 pounds.....	55.00	12.10	42.90	55.00	13.75	41.25	60.00	15.40	44.60
Over 11 and not over 12 pounds.....	55.00	13.20	41.80	55.00	15.00	40.00	60.00	16.80	43.20
Over 12 and not over 13 pounds.....	55.00	14.30	40.70	55.00	16.25	38.75	60.00	18.20	41.80
Over 13 and not over 14 pounds.....	55.00	15.40	39.60	55.00	17.50	37.50	60.00	19.60	40.40
Over 14 and not over 15 pounds.....	55.00	16.50	38.50	55.00	18.75	36.25	60.00	21.00	39.00
Over 15 and not over 16 pounds.....	60.00	17.60	42.40	60.00	20.00	40.00	70.00	22.40	47.60
Over 16 and not over 17 pounds.....	60.00	18.70	41.30	60.00	21.25	38.75	70.00	23.80	46.20
Over 17 and not over 18 pounds.....	60.00	19.80	40.20	60.00	22.50	37.50	70.00	25.20	44.80
Over 18 and not over 19 pounds.....	60.00	20.90	39.10	60.00	23.75	36.25	70.00	26.60	43.40
Over 19 and not over 20 pounds.....	60.00	22.00	38.00	60.00	25.00	35.00	70.00	28.00	42.00
Over 20 and not over 21 pounds.....	65.00	23.10	41.90	65.00	26.25	38.75	75.00	29.40	45.60
Over 21 and not over 22 pounds.....	65.00	24.20	40.80	65.00	27.50	37.50	75.00	30.80	44.20
Over 22 and not over 23 pounds.....	65.00	25.30	39.70	65.00	28.75	36.25	75.00	32.20	42.80
Over 23 and not over 24 pounds.....	65.00	26.40	38.60	65.00	30.00	35.00	75.00	33.60	41.40
Over 24 and not over 25 pounds.....	65.00	27.50	37.50	65.00	31.25	33.75	75.00	35.00	40.00
Over 25 and not over 26 pounds.....	70.00	28.60	41.40	70.00	32.50	37.50	80.00	36.40	43.60
Over 26 and not over 27 pounds.....	70.00	29.70	40.30	70.00	33.75	36.25	80.00	37.80	42.20
Over 27 and not over 28 pounds.....	70.00	30.80	39.20	70.00	35.00	35.00	80.00	39.20	40.80
Over 28 and not over 29 pounds.....	70.00	31.90	38.10	70.00	36.25	33.75	80.00	40.60	39.40
Over 29 and not over 30 pounds.....	70.00	33.00	37.00	70.00	37.50	32.50	80.00	42.00	38.00
Over 30 and not over 31 pounds.....	75.00	34.10	40.90	75.00	38.75	36.25	85.00	43.40	41.60
Over 31 and not over 32 pounds.....	75.00	35.20	39.80	75.00	40.00	35.00	85.00	44.80	40.20
Over 32 and not over 33 pounds.....	75.00	36.30	38.70	75.00	41.25	33.75	85.00	46.20	38.80
Over 33 and not over 34 pounds.....	75.00	37.40	37.60	75.00	42.50	32.50	85.00	47.60	37.40
Over 34 and not over 35 pounds.....	75.00	38.50	36.50	75.00	43.75	31.25	85.00	49.00	36.00
Over 35 and not over 36 pounds.....	80.00	39.60	40.40	80.00	45.00	35.00	90.00	50.40	39.60
Over 36 and not over 37 pounds.....	80.00	40.70	39.30	80.00	46.25	33.75	90.00	51.80	38.20
Over 37 and not over 38 pounds.....	80.00	41.80	38.20	80.00	47.50	32.50	90.00	53.20	36.80
Over 38 and not over 39 pounds.....	80.00	42.90	37.10	80.00	48.75	31.25	90.00	54.60	35.40
Over 39 and not over 40 pounds.....	80.00	44.00	36.00	80.00	50.00	30.00	90.00	56.00	34.00
Over 40 and not over 41 pounds.....	85.00	45.10	39.90	90.00	51.25	38.75	100.00	57.40	42.60
Over 41 and not over 42 pounds.....	85.00	46.20	38.80	90.00	52.50	37.50	100.00	58.80	41.20
Over 42 and not over 43 pounds.....	85.00	47.30	37.70	90.00	53.75	36.25	100.00	60.20	39.80
Over 43 and not over 44 pounds.....	85.00	48.40	36.60	90.00	55.00	35.00	100.00	61.60	38.40
Over 44 and not over 45 pounds.....	85.00	49.50	35.50	90.00	56.25	33.75	100.00	63.00	37.00
Over 45 and not over 46 pounds.....	90.00	50.60	39.40	100.00	57.50	42.50	100.00	64.40	35.60
Over 46 and not over 47 pounds.....	90.00	51.70	38.30	100.00	58.75	41.25	100.00	65.80	34.20
Over 47 and not over 48 pounds.....	90.00	52.80	37.20	100.00	60.00	40.00	100.00	67.20	32.80
Over 48 and not over 49 pounds.....	90.00	53.90	36.10	100.00	61.25	38.75	100.00	68.60	31.40
Over 49 and not over 50 pounds.....	90.00	55.00	35.00	100.00	62.50	37.50	100.00	70.00	30.00

TABLE I.—*Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.*

	When merchandise rate per 100 pounds is—								
	\$1.10.			\$1.25.			\$1.40.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Over 50 and not over 51 pounds....	95.00	56.10	43.90	100.00	63.75	36.25	102.00	71.40	30.60
Over 51 and not over 52 pounds....	95.00	57.20	42.80	100.00	65.00	35.00	104.00	72.80	31.20
Over 52 and not over 53 pounds....	95.00	58.30	41.70	100.00	66.25	33.75	106.00	74.20	31.80
Over 53 and not over 54 pounds....	95.00	59.40	40.60	100.00	67.50	32.50	108.00	75.60	32.40
Over 54 and not over 55 pounds....	95.00	60.50	39.50	100.00	68.75	31.25	110.00	77.00	33.00
Over 55 and not over 56 pounds....	100.00	61.60	48.40	110.00	70.00	40.00	112.00	78.40	33.60
Over 56 and not over 57 pounds....	100.00	62.70	47.30	110.00	71.25	38.75	114.00	79.80	34.20
Over 57 and not over 58 pounds....	100.00	63.80	46.20	110.00	72.50	37.50	116.00	81.20	34.80
Over 58 and not over 59 pounds....	100.00	64.90	45.10	110.00	73.75	36.25	118.00	82.60	35.40
Over 59 and not over 60 pounds....	100.00	66.00	44.00	110.00	75.00	35.00	120.00	84.00	36.00
Over 60 and not over 61 pounds....	110.00	67.10	42.90	115.00	76.25	38.75	122.00	85.40	36.60
Over 61 and not over 62 pounds....	110.00	68.20	41.80	115.00	77.50	37.50	124.00	86.80	37.20
Over 62 and not over 63 pounds....	110.00	69.30	40.70	115.00	78.75	36.25	126.00	88.20	37.80
Over 63 and not over 64 pounds....	110.00	70.40	39.60	115.00	80.00	35.00	128.00	89.60	38.40
Over 64 and not over 65 pounds....	110.00	71.50	38.50	115.00	81.25	33.75	130.00	91.00	39.00
Over 65 and not over 66 pounds....	110.00	72.60	37.40	125.00	82.50	42.50	132.00	92.40	39.60
Over 66 and not over 67 pounds....	110.00	73.70	36.30	125.00	83.75	41.25	134.00	93.80	40.20
Over 67 and not over 68 pounds....	110.00	74.80	35.20	125.00	85.00	40.00	136.00	95.20	40.80
Over 68 and not over 69 pounds....	110.00	75.90	34.10	125.00	86.25	38.75	138.00	96.60	41.40
Over 69 and not over 70 pounds....	110.00	77.00	33.00	125.00	87.50	37.50	140.00	98.00	42.00
Over 70 and not over 71 pounds....	110.00	78.10	31.90	125.00	88.75	36.25	140.00	99.40	40.60
Over 71 and not over 72 pounds....	110.00	79.20	30.80	125.00	90.00	35.00	140.00	100.80	39.20
Over 72 and not over 73 pounds....	110.00	80.30	29.70	125.00	91.25	33.75	140.00	102.20	37.80
Over 73 and not over 74 pounds....	110.00	81.40	28.60	125.00	92.50	32.50	140.00	103.60	36.40
Over 74 and not over 75 pounds....	110.00	82.50	27.50	125.00	93.75	31.25	140.00	105.00	35.00
Over 75 and not over 76 pounds....	110.00	83.60	26.40	125.00	95.00	30.00	140.00	106.40	33.60
Over 76 and not over 77 pounds....	110.00	84.70	25.30	125.00	96.25	28.75	140.00	107.80	32.20
Over 77 and not over 78 pounds....	110.00	85.80	24.20	125.00	97.50	27.50	140.00	109.20	30.80
Over 78 and not over 79 pounds....	110.00	86.90	23.10	125.00	98.75	26.25	140.00	110.60	29.40
Over 79 and not over 80 pounds....	110.00	88.00	22.00	125.00	100.00	25.00	140.00	112.00	28.00
Over 80 and not over 81 pounds....	110.00	89.10	20.90	125.00	101.25	23.75	140.00	113.40	26.60
Over 81 and not over 82 pounds....	110.00	90.20	19.80	125.00	102.50	22.50	140.00	114.80	25.20
Over 82 and not over 83 pounds....	110.00	91.30	18.70	125.00	103.75	21.25	140.00	116.20	23.80
Over 83 and not over 84 pounds....	110.00	92.40	17.60	125.00	105.00	20.00	140.00	117.60	22.40
Over 84 and not over 85 pounds....	110.00	93.50	16.50	125.00	106.25	18.75	140.00	119.00	21.00
Over 85 and not over 86 pounds....	110.00	94.60	15.40	125.00	107.50	17.50	140.00	120.40	19.60
Over 86 and not over 87 pounds....	110.00	95.70	14.30	125.00	108.75	16.25	140.00	121.80	18.20
Over 87 and not over 88 pounds....	110.00	96.80	13.20	125.00	110.00	15.00	140.00	123.20	16.80
Over 88 and not over 89 pounds....	110.00	97.90	12.10	125.00	111.25	13.75	140.00	124.60	15.40
Over 89 and not over 90 pounds....	110.00	99.00	11.00	125.00	112.50	12.50	140.00	126.00	14.00
Over 90 and not over 91 pounds....	110.00	100.10	9.90	125.00	113.75	11.25	140.00	127.40	12.60
Over 91 and not over 92 pounds....	110.00	101.20	8.80	125.00	115.00	10.00	140.00	128.80	11.20
Over 92 and not over 93 pounds....	110.00	102.30	7.70	125.00	116.25	8.75	140.00	130.20	9.80
Over 93 and not over 94 pounds....	110.00	103.40	6.60	125.00	117.50	7.50	140.00	131.60	8.40
Over 94 and not over 95 pounds....	110.00	104.50	5.50	125.00	118.75	6.25	140.00	133.00	7.00
Over 95 and not over 96 pounds....	110.00	105.60	4.40	125.00	120.00	5.00	140.00	134.40	5.60
Over 96 and not over 97 pounds....	110.00	106.70	3.30	125.00	121.25	3.75	140.00	135.80	4.20
Over 97 and not over 98 pounds....	110.00	107.80	2.20	125.00	122.50	2.50	140.00	137.20	2.80
Over 98 and not over 99 pounds....	110.00	108.90	1.10	125.00	123.75	1.25	140.00	138.60	1.40
Over 99 and not over 100 pounds....	110.00	110.00	.....	125.00	125.00	.....	140.00	140.00	.....
Total.....	.....	.....	3,275.00	.....	.....	3,050.50	.....	.....	3,246.80
Average.....	.....	.....	32.75	.....	.....	30.50½	.....	.....	32.47



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$1.50.			\$1.60.			\$1.75.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	25.00	1.50	23.50	25.00	1.60	23.40	25.00	1.75	23.25
Over 1 and not over 2 pounds.....	30.00	3.00	27.00	30.00	3.20	26.80	30.00	3.50	26.50
Over 2 and not over 3 pounds.....	35.00	4.50	30.50	40.00	4.80	35.20	40.00	5.25	34.75
Over 3 and not over 4 pounds.....	40.00	6.00	34.00	45.00	6.40	38.60	45.00	7.00	38.00
Over 4 and not over 5 pounds.....	45.00	7.50	37.50	50.00	8.00	42.00	50.00	8.75	41.25
Over 5 and not over 6 pounds.....	50.00	9.00	41.00	55.00	9.60	45.40	55.00	10.50	44.50
Over 6 and not over 7 pounds.....	55.00	10.50	44.50	60.00	11.20	48.80	60.00	12.25	47.75
Over 7 and not over 8 pounds.....	55.00	12.00	43.00	60.00	12.80	47.20	60.00	14.00	46.00
Over 8 and not over 9 pounds.....	55.00	13.50	41.50	60.00	14.40	45.60	60.00	15.75	44.25
Over 9 and not over 10 pounds.....	55.00	15.00	40.00	60.00	16.00	44.00	60.00	17.50	42.50
Over 10 and not over 11 pounds....	60.00	16.50	43.50	65.00	17.60	47.40	65.00	19.25	45.75
Over 11 and not over 12 pounds....	60.00	18.00	42.00	65.00	19.20	45.80	65.00	21.00	44.00
Over 12 and not over 13 pounds....	60.00	19.50	40.50	65.00	20.80	44.20	65.00	22.75	42.25
Over 13 and not over 14 pounds....	60.00	21.00	39.00	65.00	22.40	42.60	65.00	24.50	40.50
Over 14 and not over 15 pounds....	60.00	22.50	37.50	65.00	24.00	41.00	65.00	26.25	38.75
Over 15 and not over 16 pounds....	70.00	24.00	46.00	75.00	25.60	49.40	75.00	28.00	47.00
Over 16 and not over 17 pounds....	70.00	25.50	44.50	75.00	27.20	47.80	75.00	29.75	45.25
Over 17 and not over 18 pounds....	70.00	27.00	43.00	75.00	28.80	46.20	75.00	31.50	43.50
Over 18 and not over 19 pounds....	70.00	28.50	41.50	75.00	30.40	44.60	75.00	33.25	41.75
Over 19 and not over 20 pounds....	70.00	30.00	40.00	75.00	32.00	43.00	75.00	35.00	40.00
Over 20 and not over 21 pounds....	75.00	31.50	43.50	85.00	33.60	51.40	85.00	36.75	48.25
Over 21 and not over 22 pounds....	75.00	33.00	42.00	85.00	35.20	49.80	85.00	38.50	46.50
Over 22 and not over 23 pounds....	75.00	34.50	40.50	85.00	36.80	48.20	85.00	40.25	44.75
Over 23 and not over 24 pounds....	75.00	36.00	39.00	85.00	38.40	46.60	85.00	42.00	43.00
Over 24 and not over 25 pounds....	75.00	37.50	37.50	85.00	40.00	45.00	85.00	43.75	41.25
Over 25 and not over 26 pounds....	80.00	39.00	41.00	90.00	41.60	48.40	90.00	45.50	44.50
Over 26 and not over 27 pounds....	80.00	40.50	39.50	90.00	43.20	46.80	90.00	47.25	42.75
Over 27 and not over 28 pounds....	80.00	42.00	38.00	90.00	44.80	45.20	90.00	49.00	41.00
Over 28 and not over 29 pounds....	80.00	43.50	36.50	90.00	46.40	43.60	90.00	50.75	39.25
Over 29 and not over 30 pounds....	80.00	45.00	35.00	90.00	48.00	42.00	90.00	52.50	37.50
Over 30 and not over 31 pounds....	85.00	46.50	38.50	95.00	49.60	50.40	100.00	54.25	45.75
Over 31 and not over 32 pounds....	85.00	48.00	37.00	95.00	51.20	48.80	100.00	56.00	44.00
Over 32 and not over 33 pounds....	85.00	49.50	35.50	95.00	52.80	47.20	100.00	57.75	42.25
Over 33 and not over 34 pounds....	85.00	51.00	34.00	95.00	54.40	45.60	100.00	59.50	40.50
Over 34 and not over 35 pounds....	85.00	52.50	32.50	95.00	56.00	44.00	100.00	61.25	38.75
Over 35 and not over 36 pounds....	90.00	54.00	36.00	100.00	57.60	42.40	100.00	63.00	37.00
Over 36 and not over 37 pounds....	90.00	55.50	34.50	100.00	59.20	40.80	100.00	64.75	35.25
Over 37 and not over 38 pounds....	90.00	57.00	33.00	100.00	60.80	39.20	100.00	66.50	33.50
Over 38 and not over 39 pounds....	90.00	58.50	31.50	100.00	62.40	37.60	100.00	68.25	31.75
Over 39 and not over 40 pounds....	90.00	60.00	30.00	100.00	64.00	36.00	100.00	70.00	30.00
Over 40 and not over 41 pounds....	100.00	61.50	38.50	100.00	65.60	34.40	100.00	71.75	28.25
Over 41 and not over 42 pounds....	100.00	63.00	37.00	100.00	67.20	32.80	100.00	73.50	26.50
Over 42 and not over 43 pounds....	100.00	64.50	35.50	100.00	68.80	31.20	100.00	75.25	24.75
Over 43 and not over 44 pounds....	100.00	66.00	34.00	100.00	70.40	29.60	100.00	77.00	23.00
Over 44 and not over 45 pounds....	100.00	67.50	32.50	100.00	72.00	28.00	100.00	78.75	21.25
Over 45 and not over 46 pounds....	100.00	69.00	31.00	100.00	73.60	26.40	100.00	80.50	19.50
Over 46 and not over 47 pounds....	100.00	70.50	29.50	100.00	75.20	24.80	100.00	82.25	17.75
Over 47 and not over 48 pounds....	100.00	72.00	28.00	100.00	76.80	23.20	100.00	84.00	16.00
Over 48 and not over 49 pounds....	100.00	73.50	26.50	100.00	78.40	21.60	100.00	85.75	14.25
Over 49 and not over 50 pounds....	100.00	75.00	25.00	100.00	80.00	20.00	100.00	87.50	12.50



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$1.50.			\$1.60.			\$1.75.		
	1	2	3	1	2	3	1	2	3
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Over 50 and not over 51 pounds....	102.00	76.50	25.50	102.00	81.60	20.40	102.00	89.25	12.75
Over 51 and not over 52 pounds....	104.00	78.00	26.00	104.00	83.20	20.80	104.00	91.00	13.00
Over 52 and not over 53 pounds....	106.00	79.50	26.50	106.00	84.80	21.20	106.00	92.75	13.25
Over 53 and not over 54 pounds....	108.00	81.00	27.00	108.00	86.40	21.60	108.00	94.50	13.50
Over 54 and not over 55 pounds....	110.00	82.50	27.50	110.00	88.00	22.00	110.00	96.25	13.75
Over 55 and not over 56 pounds....	112.00	84.00	28.00	112.00	89.60	22.40	112.00	98.00	14.00
Over 56 and not over 57 pounds....	114.00	85.50	28.50	114.00	91.20	22.80	114.00	99.75	14.25
Over 57 and not over 58 pounds....	116.00	87.00	29.00	116.00	92.80	23.20	116.00	101.50	14.50
Over 58 and not over 59 pounds....	118.00	88.50	29.50	118.00	94.40	23.60	118.00	103.25	14.75
Over 59 and not over 60 pounds....	120.00	90.00	30.00	120.00	96.00	24.00	120.00	105.00	15.00
Over 60 and not over 61 pounds....	122.00	91.50	30.50	122.00	97.60	24.40	122.00	106.75	15.25
Over 61 and not over 62 pounds....	124.00	93.00	31.00	124.00	99.20	24.80	124.00	108.50	15.50
Over 62 and not over 63 pounds....	126.00	94.50	31.50	126.00	100.80	25.20	126.00	110.25	15.75
Over 63 and not over 64 pounds....	128.00	96.00	32.00	128.00	102.40	25.60	128.00	112.00	16.00
Over 64 and not over 65 pounds....	130.00	97.50	32.50	130.00	104.00	26.00	130.00	113.75	16.25
Over 65 and not over 66 pounds....	132.00	99.00	33.00	132.00	105.60	26.40	132.00	115.50	16.50
Over 66 and not over 67 pounds....	134.00	100.50	33.50	134.00	107.20	26.80	134.00	117.25	16.75
Over 67 and not over 68 pounds....	136.00	102.00	34.00	136.00	108.80	27.20	136.00	119.00	17.00
Over 68 and not over 69 pounds....	138.00	103.50	34.50	138.00	110.40	27.60	138.00	120.75	17.25
Over 69 and not over 70 pounds....	140.00	105.00	35.00	140.00	112.00	28.00	140.00	122.50	17.50
Over 70 and not over 71 pounds....	142.00	106.50	35.50	142.00	113.60	28.40	142.00	124.25	17.75
Over 71 and not over 72 pounds....	144.00	108.00	36.00	144.00	115.20	28.80	144.00	126.00	18.00
Over 72 and not over 73 pounds....	146.00	109.50	36.50	146.00	116.80	29.20	146.00	127.75	18.25
Over 73 and not over 74 pounds....	148.00	111.00	37.00	148.00	118.40	29.60	148.00	129.50	18.50
Over 74 and not over 75 pounds....	150.00	112.50	37.50	150.00	120.00	30.00	150.00	131.25	18.75
Over 75 and not over 76 pounds....	150.00	114.00	36.00	152.00	121.60	30.40	152.00	133.00	19.00
Over 76 and not over 77 pounds....	150.00	115.50	34.50	154.00	123.20	30.80	154.00	134.75	19.25
Over 77 and not over 78 pounds....	150.00	117.00	33.00	156.00	124.80	31.20	156.00	136.50	19.50
Over 78 and not over 79 pounds....	150.00	118.50	31.50	158.00	126.40	31.60	158.00	138.25	19.75
Over 79 and not over 80 pounds....	150.00	120.00	30.00	160.00	128.00	32.00	160.00	140.00	20.00
Over 80 and not over 81 pounds....	150.00	121.50	28.50	160.00	129.60	30.40	162.00	141.75	20.25
Over 81 and not over 82 pounds....	150.00	123.00	27.00	160.00	131.20	28.80	164.00	143.50	20.50
Over 82 and not over 83 pounds....	150.00	124.50	25.50	160.00	132.80	27.20	166.00	145.25	20.75
Over 83 and not over 84 pounds....	150.00	126.00	24.00	160.00	134.40	25.60	168.00	147.00	21.00
Over 84 and not over 85 pounds....	150.00	127.50	22.50	160.00	136.00	24.00	170.00	148.75	21.25
Over 85 and not over 86 pounds....	150.00	129.00	21.00	160.00	137.60	22.40	172.00	150.50	21.50
Over 86 and not over 87 pounds....	150.00	130.50	19.50	160.00	139.20	20.80	174.00	152.25	21.75
Over 87 and not over 88 pounds....	150.00	132.00	18.00	160.00	140.80	19.20	175.00	154.00	21.00
Over 88 and not over 89 pounds....	150.00	133.50	16.50	160.00	142.40	17.60	175.00	155.75	19.25
Over 89 and not over 90 pounds....	150.00	135.00	15.00	160.00	144.00	16.00	175.00	157.50	17.50
Over 90 and not over 91 pounds....	150.00	136.50	13.50	160.00	145.60	14.40	175.00	159.25	15.75
Over 91 and not over 92 pounds....	150.00	138.00	12.00	160.00	147.20	12.80	175.00	161.00	14.00
Over 92 and not over 93 pounds....	150.00	139.50	10.50	160.00	148.80	11.20	175.00	162.75	12.25
Over 93 and not over 94 pounds....	150.00	141.00	9.00	160.00	150.40	9.60	175.00	164.50	10.50
Over 94 and not over 95 pounds....	150.00	142.50	7.50	160.00	152.00	8.00	175.00	166.25	8.75
Over 95 and not over 96 pounds....	150.00	144.00	6.00	160.00	153.60	6.40	175.00	168.00	7.00
Over 96 and not over 97 pounds....	150.00	145.50	4.50	160.00	155.20	4.80	175.00	169.75	5.25
Over 97 and not over 98 pounds....	150.00	147.00	3.00	160.00	156.80	3.20	175.00	171.50	3.50
Over 98 and not over 99 pounds....	150.00	148.50	1.50	160.00	158.40	1.60	175.00	173.25	1.75
Over 99 and not over 100 pounds....	150.00	150.00	.....	160.00	160.00	.....	175.00	175.00	.....
Total.....	.....	.....	3,065.00	.....	.....	3,104.50	.....	.....	2,598.30
Average.....	.....	.....	30.65	.....	.....	31.04	.....	.....	25.98

TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$2.			\$2.25.			\$2.50.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	25.00	2.00	23.00	25.00	2.25	22.75	25.00	2.50	22.50
Over 1 and not over 2 pounds.....	35.00	4.00	31.00	35.00	4.50	30.50	35.00	5.00	30.00
Over 2 and not over 3 pounds.....	45.00	6.00	39.00	45.00	6.75	38.25	45.00	7.50	37.50
Over 3 and not over 4 pounds.....	50.00	8.00	42.00	55.00	9.00	46.00	55.00	10.00	45.00
Over 4 and not over 5 pounds.....	55.00	10.00	45.00	60.00	11.25	48.75	60.00	12.50	47.50
Over 5 and not over 6 pounds.....	60.00	12.00	48.00	70.00	13.50	56.50	70.00	15.00	55.00
Over 6 and not over 7 pounds.....	60.00	14.00	46.00	70.00	15.75	54.25	70.00	17.50	52.50
Over 7 and not over 8 pounds.....	70.00	16.00	54.00	75.00	18.00	57.00	75.00	20.00	55.00
Over 8 and not over 9 pounds.....	70.00	18.00	52.00	75.00	20.25	54.75	75.00	22.50	52.50
Over 9 and not over 10 pounds.....	70.00	20.00	50.00	75.00	22.50	52.50	75.00	25.00	50.00
Over 10 and not over 11 pounds....	75.00	22.00	53.00	85.00	24.75	60.25	85.00	27.50	57.50
Over 11 and not over 12 pounds....	75.00	24.00	51.00	85.00	27.00	58.00	85.00	30.00	55.00
Over 12 and not over 13 pounds....	75.00	26.00	49.00	85.00	29.25	55.75	85.00	32.50	52.50
Over 13 and not over 14 pounds....	75.00	28.00	47.00	85.00	31.50	53.50	85.00	35.00	50.00
Over 14 and not over 15 pounds....	75.00	30.00	45.00	85.00	33.75	51.25	85.00	37.50	47.50
Over 15 and not over 16 pounds....	85.00	32.00	53.00	100.00	36.00	64.00	100.00	40.00	60.00
Over 16 and not over 17 pounds....	85.00	34.00	51.00	100.00	38.25	61.75	100.00	42.50	57.50
Over 17 and not over 18 pounds....	85.00	36.00	49.00	100.00	40.50	59.50	100.00	45.00	55.00
Over 18 and not over 19 pounds....	85.00	38.00	47.00	100.00	42.75	57.25	100.00	47.50	52.50
Over 19 and not over 20 pounds....	85.00	40.00	45.00	100.00	45.00	55.00	100.00	50.00	50.00
Over 20 and not over 21 pounds....	100.00	42.00	58.00	110.00	47.25	62.75	110.00	52.50	57.50
Over 21 and not over 22 pounds....	100.00	44.00	56.00	110.00	49.50	60.50	110.00	55.00	55.00
Over 22 and not over 23 pounds....	100.00	46.00	54.00	110.00	51.75	58.25	110.00	57.50	52.50
Over 23 and not over 24 pounds....	100.00	48.00	52.00	110.00	54.00	56.00	110.00	60.00	50.00
Over 24 and not over 25 pounds....	100.00	50.00	50.00	110.00	56.25	53.25	110.00	62.50	47.50
Over 25 and not over 26 pounds....	100.00	52.00	48.00	113.00	58.50	54.50	115.00	65.00	50.00
Over 26 and not over 27 pounds....	100.00	54.00	46.00	113.00	60.75	52.25	115.00	67.50	47.50
Over 27 and not over 28 pounds....	100.00	56.00	44.00	113.00	63.00	50.00	115.00	70.00	45.00
Over 28 and not over 29 pounds....	100.00	58.00	42.00	113.00	65.25	50.00	115.00	72.50	42.50
Over 29 and not over 30 pounds....	100.00	60.00	40.00	113.00	67.50	45.50	115.00	75.00	40.00
Over 30 and not over 31 pounds....	100.00	62.00	38.00	113.00	69.75	43.25	125.00	77.50	47.50
Over 31 and not over 32 pounds....	100.00	64.00	36.00	113.00	72.00	41.00	125.00	80.00	45.00
Over 32 and not over 33 pounds....	100.00	66.00	34.00	113.00	74.25	38.75	125.00	82.50	42.50
Over 33 and not over 34 pounds....	100.00	68.00	32.00	113.00	76.50	37.50	125.00	85.00	40.00
Over 34 and not over 35 pounds....	100.00	70.00	30.00	113.00	78.75	34.25	125.00	87.50	37.50
Over 35 and not over 36 pounds....	100.00	72.00	28.00	113.00	81.00	32.00	125.00	90.00	35.00
Over 36 and not over 37 pounds....	100.00	74.00	26.00	113.00	83.25	29.75	125.00	92.50	32.50
Over 37 and not over 38 pounds....	100.00	76.00	24.00	113.00	85.50	27.50	125.00	95.00	30.00
Over 38 and not over 39 pounds....	100.00	78.00	22.00	113.00	87.75	25.25	125.00	97.50	27.50
Over 39 and not over 40 pounds....	100.00	80.00	20.00	113.00	90.00	23.00	125.00	100.00	25.00
Over 40 and not over 41 pounds....	100.00	82.00	18.00	113.00	92.25	20.75	125.00	102.50	22.50
Over 41 and not over 42 pounds....	100.00	84.00	16.00	113.00	94.50	18.50	125.00	105.00	20.00
Over 42 and not over 43 pounds....	100.00	86.00	14.00	113.00	96.75	16.25	125.00	107.50	17.50
Over 43 and not over 44 pounds....	100.00	88.00	12.00	113.00	99.00	14.00	125.00	110.00	15.00
Over 44 and not over 45 pounds....	100.00	90.00	10.00	113.00	101.25	11.75	125.00	112.50	12.50
Over 45 and not over 46 pounds....	100.00	92.00	8.00	113.00	103.50	9.50	125.00	115.00	10.00
Over 46 and not over 47 pounds....	100.00	94.00	6.00	113.00	105.75	7.25	125.00	117.50	7.50
Over 47 and not over 48 pounds....	100.00	96.00	4.00	113.00	108.00	5.00	125.00	120.00	5.00
Over 48 and not over 49 pounds....	100.00	98.00	2.00	113.00	110.25	2.75	125.00	122.50	2.50
Over 49 and not over 50 pounds....	100.00	100.00	.....	113.00	112.50	.50	125.00	125.00	.....
Total.....	.....	.....	1,790.00	.....	.....	1,966.75	.....	.....	1,947.50
Average.....	.....	.....	35.80	.....	.....	39.33	.....	.....	38.95



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$2.75.			\$3.			\$3.25.		
	1	2	3	1	2	3	1	2	3
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Packages not over 1 pound.....	25.00	2.75	22.25	25.00	3.00	22.00	25.00	3.25	21.75
Over 1 and not over 2 pounds.....	35.00	5.50	29.50	35.00	6.00	29.00	35.00	6.50	28.50
Over 2 and not over 3 pounds.....	45.00	8.25	36.75	45.00	9.00	36.00	45.00	9.75	35.25
Over 3 and not over 4 pounds.....	60.00	11.00	49.00	60.00	12.00	48.00	60.00	13.00	47.00
Over 4 and not over 5 pounds.....	65.00	13.75	51.25	65.00	15.00	50.00	70.00	16.25	53.75
Over 5 and not over 6 pounds.....	75.00	16.50	58.50	75.00	18.00	57.00	80.00	19.50	60.50
Over 6 and not over 7 pounds.....	75.00	19.25	55.75	75.00	21.00	54.00	80.00	22.75	57.25
Over 7 and not over 8 pounds.....	80.00	22.00	58.00	80.00	24.00	56.00	90.00	26.00	64.00
Over 8 and not over 9 pounds.....	80.00	24.75	55.25	80.00	27.00	53.00	90.00	29.25	60.75
Over 9 and not over 10 pounds.....	80.00	27.50	52.50	80.00	30.00	50.00	90.00	32.50	57.50
Over 10 and not over 11 pounds....	90.00	30.25	59.75	90.00	33.00	57.00	100.00	35.75	64.25
Over 11 and not over 12 pounds....	90.00	33.00	57.00	90.00	36.00	54.00	100.00	39.00	61.00
Over 12 and not over 13 pounds....	90.00	35.75	54.25	90.00	39.00	51.00	100.00	42.25	57.75
Over 13 and not over 14 pounds....	90.00	38.50	51.50	90.00	42.00	48.00	100.00	45.50	54.50
Over 14 and not over 15 pounds....	90.00	41.25	48.75	90.00	45.00	45.00	100.00	48.75	51.25
Over 15 and not over 16 pounds....	110.00	44.00	66.00	110.00	48.00	62.00	120.00	52.00	68.00
Over 16 and not over 17 pounds....	110.00	46.75	63.25	110.00	51.00	59.00	120.00	55.25	64.75
Over 17 and not over 18 pounds....	110.00	49.50	60.50	110.00	54.00	56.00	120.00	58.50	61.50
Over 18 and not over 19 pounds....	110.00	52.25	57.75	110.00	57.00	53.00	120.00	61.75	58.25
Over 19 and not over 20 pounds....	110.00	55.00	55.00	110.00	60.00	50.00	120.00	65.00	55.00
Over 20 and not over 21 pounds....	120.00	57.75	62.25	120.00	63.00	57.00	130.00	68.25	61.75
Over 21 and not over 22 pounds....	120.00	60.50	59.50	120.00	66.00	54.00	130.00	71.50	58.50
Over 22 and not over 23 pounds....	120.00	63.25	56.75	120.00	69.00	51.00	130.00	74.75	55.25
Over 23 and not over 24 pounds....	120.00	66.00	54.00	120.00	72.00	48.00	130.00	78.00	52.00
Over 24 and not over 25 pounds....	120.00	68.75	51.25	120.00	75.00	45.00	130.00	81.25	48.75
Over 25 and not over 26 pounds....	130.00	71.50	58.50	130.00	78.00	52.00	150.00	84.50	65.50
Over 26 and not over 27 pounds....	130.00	74.25	55.75	130.00	81.00	49.00	150.00	87.75	62.25
Over 27 and not over 28 pounds....	130.00	77.00	53.00	130.00	84.00	46.00	150.00	91.00	59.00
Over 28 and not over 29 pounds....	130.00	79.75	50.25	130.00	87.00	43.00	150.00	94.25	55.75
Over 29 and not over 30 pounds....	130.00	82.50	47.50	130.00	90.00	40.00	150.00	97.50	52.50
Over 30 and not over 31 pounds....	138.00	85.25	52.75	140.00	93.00	47.00	160.00	100.75	59.25
Over 31 and not over 32 pounds....	138.00	88.00	50.00	140.00	96.00	44.00	160.00	104.00	56.00
Over 32 and not over 33 pounds....	138.00	90.75	47.25	140.00	99.00	41.00	160.00	107.25	52.75
Over 33 and not over 34 pounds....	138.00	93.50	44.50	140.00	102.00	38.00	160.00	110.50	49.50
Over 34 and not over 35 pounds....	138.00	96.25	41.75	140.00	105.00	35.00	160.00	113.75	46.25
Over 35 and not over 36 pounds....	138.00	99.00	39.00	150.00	108.00	42.00	163.00	117.00	46.00
Over 36 and not over 37 pounds....	138.00	101.75	36.25	150.00	111.00	39.00	163.00	120.25	42.75
Over 37 and not over 38 pounds....	138.00	104.50	33.50	150.00	114.00	36.00	163.00	123.50	39.50
Over 38 and not over 39 pounds....	138.00	107.25	30.75	150.00	117.00	33.00	163.00	126.75	36.25
Over 39 and not over 40 pounds....	138.00	110.00	28.00	150.00	120.00	30.00	163.00	130.00	33.00
Over 40 and not over 41 pounds....	138.00	112.75	25.25	150.00	123.00	27.00	163.00	133.25	29.75
Over 41 and not over 42 pounds....	138.00	115.50	22.50	150.00	126.00	24.00	163.00	136.50	26.50
Over 42 and not over 43 pounds....	138.00	118.25	19.75	150.00	129.00	21.00	163.00	139.75	23.25
Over 43 and not over 44 pounds....	138.00	121.00	17.00	150.00	132.00	18.00	163.00	143.00	20.00
Over 44 and not over 45 pounds....	138.00	123.75	14.25	150.00	135.00	15.00	163.00	146.25	16.75
Over 45 and not over 46 pounds....	138.00	126.50	11.50	150.00	138.00	12.00	163.00	149.50	13.50
Over 46 and not over 47 pounds....	138.00	129.25	8.75	150.00	141.00	9.00	163.00	152.75	10.25
Over 47 and not over 48 pounds....	138.00	132.00	6.00	150.00	144.00	6.00	163.00	156.00	7.00
Over 48 and not over 49 pounds....	138.00	134.75	3.25	150.00	147.00	3.00	163.00	159.25	3.75
Over 49 and not over 50 pounds....	138.00	137.50	.50	150.00	150.00	.....	163.00	162.50	.50
Total.....			2,123.75			1,995.00			2,266.25
Average.....			42.47			39.90			45.32



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$3.50.			\$3.75.			\$4.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	25.00	3.50	21.50	25.00	3.75	21.25	25.00	4.00	21.00
Over 1 and not over 2 pounds.....	35.00	7.00	28.00	35.00	7.50	27.50	35.00	8.00	27.00
Over 2 and not over 3 pounds.....	45.00	10.50	34.50	45.00	11.25	33.75	45.00	12.00	33.00
Over 3 and not over 4 pounds.....	60.00	14.00	46.00	60.00	15.00	45.00	60.00	16.00	44.00
Over 4 and not over 5 pounds.....	70.00	17.50	52.50	70.00	18.75	51.25	70.00	20.00	50.00
Over 5 and not over 6 pounds.....	80.00	21.00	59.00	85.00	22.50	62.50	85.00	24.00	61.00
Over 6 and not over 7 pounds.....	80.00	24.50	55.50	85.00	26.25	58.75	85.00	28.00	57.00
Over 7 and not over 8 pounds.....	90.00	28.00	62.00	100.00	30.00	70.00	100.00	32.00	68.00
Over 8 and not over 9 pounds.....	90.00	31.50	58.50	100.00	33.75	66.25	100.00	36.00	64.00
Over 9 and not over 10 pounds.....	90.00	35.00	55.00	100.00	37.50	62.50	100.00	40.00	60.00
Over 10 and not over 11 pounds....	100.00	38.50	61.50	110.00	41.25	68.75	110.00	44.00	66.00
Over 11 and not over 12 pounds.....	100.00	42.00	58.00	110.00	45.00	65.00	110.00	48.00	62.00
Over 12 and not over 13 pounds.....	100.00	45.50	54.50	110.00	48.75	61.25	110.00	52.00	58.00
Over 13 and not over 14 pounds.....	100.00	49.00	51.00	110.00	52.50	57.50	110.00	56.00	54.00
Over 14 and not over 15 pounds....	100.00	52.50	47.50	110.00	56.25	53.75	110.00	60.00	50.00
Over 15 and not over 16 pounds....	120.00	56.00	64.00	125.00	60.00	65.00	125.00	64.00	61.00
Over 16 and not over 17 pounds....	120.00	59.50	60.50	125.00	63.75	61.25	125.00	68.00	57.00
Over 17 and not over 18 pounds.....	120.00	63.00	57.00	125.00	67.50	57.50	125.00	72.00	53.00
Over 18 and not over 19 pounds.....	120.00	66.50	53.50	125.00	71.25	53.75	125.00	76.00	49.00
Over 19 and not over 20 pounds.....	120.00	70.00	50.00	125.00	75.00	50.00	125.00	80.00	45.00
Over 20 and not over 21 pounds....	130.00	73.50	56.50	140.00	78.75	61.25	140.00	84.00	56.00
Over 21 and not over 22 pounds.....	130.00	77.00	53.00	140.00	82.50	57.50	140.00	88.00	52.00
Over 22 and not over 23 pounds.....	130.00	80.50	49.50	140.00	86.25	53.75	140.00	92.00	48.00
Over 23 and not over 24 pounds.....	130.00	84.00	46.00	140.00	90.00	50.00	140.00	96.00	44.00
Over 24 and not over 25 pounds.....	130.00	87.50	42.50	140.00	93.75	46.25	140.00	100.00	40.00
Over 25 and not over 26 pounds.....	150.00	91.00	59.00	160.00	97.50	62.50	160.00	104.00	56.00
Over 26 and not over 27 pounds.....	150.00	94.50	55.50	160.00	101.25	58.75	160.00	108.00	52.00
Over 27 and not over 28 pounds.....	150.00	98.00	52.00	160.00	105.00	55.00	160.00	112.00	48.00
Over 28 and not over 29 pounds.....	150.00	101.50	48.50	160.00	108.75	51.25	160.00	116.00	44.00
Over 29 and not over 30 pounds....	150.00	105.00	45.00	160.00	112.50	47.50	160.00	120.00	40.00
Over 30 and not over 31 pounds....	160.00	108.50	51.50	170.00	116.25	53.75	170.00	124.00	46.00
Over 31 and not over 32 pounds.....	160.00	112.00	48.00	170.00	120.00	50.00	170.00	128.00	42.00
Over 32 and not over 33 pounds.....	160.00	115.50	44.50	170.00	123.75	46.25	170.00	132.00	38.00
Over 33 and not over 34 pounds.....	160.00	119.00	41.00	170.00	127.50	42.50	170.00	136.00	34.00
Over 34 and not over 35 pounds.....	160.00	122.50	37.50	170.00	131.25	38.75	170.00	140.00	30.00
Over 35 and not over 36 pounds....	175.00	126.00	49.00	185.00	135.00	50.00	185.00	144.00	41.00
Over 36 and not over 37 pounds.....	175.00	129.50	45.50	185.00	138.75	46.25	185.00	148.00	37.00
Over 37 and not over 38 pounds.....	175.00	133.00	42.00	185.00	142.50	42.50	185.00	152.00	33.00
Over 38 and not over 39 pounds.....	175.00	136.50	38.50	185.00	146.25	38.75	185.00	156.00	29.00
Over 39 and not over 40 pounds....	175.00	140.00	35.00	185.00	150.00	35.00	185.00	160.00	25.00
Over 40 and not over 41 pounds....	175.00	143.50	31.50	188.00	153.75	34.25	200.00	164.00	36.00
Over 41 and not over 42 pounds.....	175.00	147.00	28.00	188.00	157.50	30.50	200.00	168.00	32.00
Over 42 and not over 43 pounds.....	175.00	150.50	24.50	188.00	161.25	26.75	200.00	172.00	28.00
Over 43 and not over 44 pounds.....	175.00	154.00	21.00	188.00	165.00	23.00	200.00	176.00	24.00
Over 44 and not over 45 pounds.....	175.00	157.50	17.50	188.00	168.75	19.25	200.00	180.00	20.00
Over 45 and not over 46 pounds....	175.00	161.00	14.00	188.00	172.50	15.50	200.00	184.00	16.00
Over 46 and not over 47 pounds.....	175.00	164.50	10.50	188.00	176.25	11.75	200.00	188.00	12.00
Over 47 and not over 48 pounds.....	175.00	168.00	7.00	188.00	180.00	8.00	200.00	192.00	8.00
Over 48 and not over 49 pounds.....	175.00	171.50	3.50	188.00	183.75	4.25	200.00	196.00	4.00
Over 49 and not over 50 pounds.....	175.00	175.00	.....	188.00	187.50	.50	200.00	200.00	.....
Total .....	.....	.....	2,127.50	.....	.....	2,253.75	.....	.....	2,055.00
Average .....	.....	.....	42.55	.....	.....	45.07	.....	.....	41.10

TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$4.25.			\$4.50.			\$4.75.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	4.25	25.75	30.00	4.50	25.50	30.00	4.75	25.25
Over 1 and not over 2 pounds.....	35.00	8.50	26.50	35.00	9.00	26.00	35.00	9.50	25.50
Over 2 and not over 3 pounds.....	45.00	12.75	32.25	45.00	13.50	31.50	45.00	14.25	30.75
Over 3 and not over 4 pounds.....	60.00	17.00	43.00	60.00	18.00	42.00	60.00	19.00	41.00
Over 4 and not over 5 pounds.....	75.00	21.25	53.75	75.00	22.50	52.50	75.00	23.75	51.75
Over 5 and not over 6 pounds.....	90.00	25.50	64.50	90.00	27.00	63.00	90.00	28.50	61.50
Over 6 and not over 7 pounds.....	90.00	29.75	60.25	90.00	31.50	58.50	90.00	33.25	56.75
Over 7 and not over 8 pounds.....	100.00	34.00	66.00	100.00	36.00	64.00	110.00	38.00	72.00
Over 8 and not over 9 pounds.....	100.00	38.25	61.75	100.00	40.50	59.50	110.00	42.75	67.25
Over 9 and not over 10 pounds.....	100.00	42.50	57.50	100.00	45.00	55.00	110.00	47.50	62.50
Over 10 and not over 11 pounds....	115.00	46.75	68.25	115.00	49.50	65.50	125.00	52.25	72.75
Over 11 and not over 12 pounds.....	115.00	51.00	64.00	115.00	54.00	61.00	125.00	57.00	68.00
Over 12 and not over 13 pounds.....	115.00	55.25	59.75	115.00	58.50	56.50	125.00	61.75	63.25
Over 13 and not over 14 pounds.....	115.00	59.50	55.50	115.00	63.00	52.00	125.00	66.50	58.50
Over 14 and not over 15 pounds....	115.00	63.75	51.25	115.00	67.50	47.50	125.00	71.25	53.75
Over 15 and not over 16 pounds....	130.00	68.00	62.00	130.00	72.00	58.00	140.00	76.00	64.00
Over 16 and not over 17 pounds....	130.00	72.25	57.75	130.00	76.50	53.50	140.00	80.75	59.25
Over 17 and not over 18 pounds.....	130.00	76.50	53.50	130.00	81.00	49.00	140.00	85.50	54.50
Over 18 and not over 19 pounds.....	130.00	80.75	49.25	130.00	85.50	44.50	140.00	90.25	49.75
Over 19 and not over 20 pounds.....	130.00	85.00	45.00	130.00	90.00	40.00	140.00	95.00	45.00
Over 20 and not over 21 pounds....	150.00	89.25	60.75	150.00	94.50	55.50	160.00	99.75	60.25
Over 21 and not over 22 pounds.....	150.00	93.50	56.50	150.00	99.00	51.00	160.00	104.50	55.50
Over 22 and not over 23 pounds.....	150.00	97.75	52.25	150.00	103.50	46.50	160.00	109.25	50.75
Over 23 and not over 24 pounds.....	150.00	102.00	48.00	150.00	108.00	42.00	160.00	114.00	46.00
Over 24 and not over 25 pounds.....	150.00	106.25	43.75	150.00	112.50	37.50	160.00	118.75	41.25
Over 25 and not over 26 pounds.....	170.00	110.50	59.50	170.00	117.00	53.00	175.00	123.50	51.50
Over 26 and not over 27 pounds.....	170.00	114.75	55.25	170.00	121.50	48.50	175.00	128.25	46.75
Over 27 and not over 28 pounds.....	170.00	119.00	51.00	170.00	126.00	44.00	175.00	133.00	42.00
Over 28 and not over 29 pounds.....	170.00	123.25	46.75	170.00	130.50	39.50	175.00	137.75	37.25
Over 29 and not over 30 pounds.....	170.00	127.50	42.50	170.00	135.00	35.00	175.00	142.50	32.50
Over 30 and not over 31 pounds....	190.00	131.75	58.25	190.00	139.50	50.50	200.00	147.25	52.75
Over 31 and not over 32 pounds.....	190.00	136.00	54.00	190.00	144.00	46.00	200.00	152.00	48.00
Over 32 and not over 33 pounds.....	190.00	140.25	49.75	190.00	148.50	41.50	200.00	156.75	43.25
Over 33 and not over 34 pounds.....	190.00	144.50	45.50	190.00	153.00	37.00	200.00	161.50	38.50
Over 34 and not over 35 pounds.....	190.00	148.75	41.25	190.00	157.50	32.50	200.00	166.25	33.75
Over 35 and not over 36 pounds....	200.00	153.00	47.00	200.00	162.00	38.00	225.00	171.00	54.00
Over 36 and not over 37 pounds.....	200.00	157.25	42.75	200.00	166.50	33.50	225.00	175.75	49.25
Over 37 and not over 38 pounds.....	200.00	161.50	38.50	200.00	171.00	29.00	225.00	180.50	44.50
Over 38 and not over 39 pounds.....	200.00	165.75	34.25	200.00	175.50	24.50	225.00	185.25	39.75
Over 39 and not over 40 pounds.....	200.00	170.00	30.00	200.00	180.00	20.00	225.00	190.00	35.00
Over 40 and not over 41 pounds....	213.00	174.25	38.75	225.00	184.50	40.50	238.00	194.75	43.25
Over 41 and not over 42 pounds.....	213.00	178.50	34.50	225.00	189.00	36.00	238.00	199.50	38.50
Over 42 and not over 43 pounds.....	213.00	182.75	30.25	225.00	193.50	31.50	238.00	204.25	33.75
Over 43 and not over 44 pounds.....	213.00	187.00	26.00	225.00	198.00	27.00	238.00	209.00	29.00
Over 44 and not over 45 pounds.....	213.00	191.25	21.75	225.00	202.50	22.50	238.00	213.75	24.25
Over 45 and not over 46 pounds....	213.00	195.50	17.50	225.00	207.00	18.00	238.00	218.50	19.50
Over 46 and not over 47 pounds.....	213.00	199.75	13.25	225.00	211.50	13.50	238.00	223.25	14.75
Over 47 and not over 48 pounds.....	213.00	204.00	9.00	225.00	216.00	9.00	238.00	228.00	10.00
Over 48 and not over 49 pounds.....	213.00	208.25	4.75	225.00	220.50	4.50	238.00	232.75	5.25
Over 49 and not over 50 pounds.....	213.00	212.50	.50	225.00	225.00	.....	238.00	237.50	.50
Total.....	.....	.....	2,211.25	.....	.....	2,012.50	.....	.....	2,204.25
Average.....	.....	.....	44.22	.....	.....	40.25	.....	.....	44.08



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$5.			\$5.50.			\$6.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	5.00	25.00	30.00	5.50	24.50	30.00	6.00	24.00
Over 1 and not over 2 pounds....	35.00	10.00	25.00	35.00	11.00	24.00	35.00	12.00	23.00
Over 2 and not over 3 pounds....	45.00	15.00	30.00	45.00	16.50	28.50	45.00	18.00	27.00
Over 3 and not over 4 pounds....	60.00	20.00	40.00	60.00	22.00	38.00	60.00	24.00	36.00
Over 4 and not over 5 pounds....	75.00	25.00	50.00	75.00	27.50	47.50	75.00	30.00	45.00
Over 5 and not over 6 pounds....	90.00	30.00	60.00	90.00	33.00	57.00	90.00	36.00	54.00
Over 6 and not over 7 pounds....	100.00	35.00	65.00	100.00	38.50	61.50	100.00	42.00	58.00
Over 7 and not over 8 pounds....	110.00	40.00	70.00	115.00	44.00	71.00	115.00	48.00	67.00
Over 8 and not over 9 pounds....	110.00	45.00	65.00	115.00	49.50	65.50	115.00	54.00	61.00
Over 9 and not over 10 pounds....	110.00	50.00	60.00	115.00	55.00	60.00	115.00	60.00	55.00
Over 10 and not over 11 pounds..	125.00	55.00	70.00	135.00	60.50	74.50	135.00	66.00	69.00
Over 11 and not over 12 pounds..	125.00	60.00	65.00	135.00	66.00	69.00	135.00	72.00	63.00
Over 12 and not over 13 pounds..	125.00	65.00	60.00	135.00	71.50	63.50	135.00	78.00	57.00
Over 13 and not over 14 pounds..	125.00	70.00	55.00	135.00	77.00	58.00	135.00	84.00	51.00
Over 14 and not over 15 pounds..	125.00	75.00	50.00	135.00	82.50	52.50	135.00	90.00	45.00
Over 15 and not over 16 pounds..	140.00	80.00	60.00	165.00	88.00	77.00	165.00	96.00	69.00
Over 16 and not over 17 pounds..	140.00	85.00	55.00	165.00	93.50	71.50	165.00	102.00	63.00
Over 17 and not over 18 pounds..	140.00	90.00	50.00	165.00	99.00	66.00	165.00	108.00	57.00
Over 18 and not over 19 pounds..	140.00	95.00	45.00	165.00	104.50	60.50	165.00	114.00	51.00
Over 19 and not over 20 pounds..	140.00	100.00	40.00	165.00	110.00	55.00	165.00	120.00	45.00
Over 20 and not over 21 pounds..	160.00	105.00	55.00	185.00	115.50	69.50	185.00	126.00	59.00
Over 21 and not over 22 pounds..	160.00	110.00	50.00	185.00	121.00	64.00	185.00	132.00	53.00
Over 22 and not over 23 pounds..	160.00	115.00	45.00	185.00	126.50	58.50	185.00	138.00	47.00
Over 23 and not over 24 pounds..	160.00	120.00	40.00	185.00	132.00	53.00	185.00	144.00	41.00
Over 24 and not over 25 pounds..	160.00	125.00	35.00	185.00	137.50	47.50	185.00	150.00	35.00
Over 25 and not over 26 pounds..	175.00	130.00	45.00	210.00	143.00	67.00	210.00	156.00	54.00
Over 26 and not over 27 pounds..	175.00	135.00	40.00	210.00	148.50	62.50	210.00	162.00	48.00
Over 27 and not over 28 pounds..	175.00	140.00	35.00	210.00	154.00	56.00	210.00	168.00	42.00
Over 28 and not over 29 pounds..	175.00	145.00	30.00	210.00	159.50	50.50	210.00	174.00	36.00
Over 29 and not over 30 pounds..	175.00	150.00	25.00	210.00	165.00	45.00	210.00	180.00	30.00
Over 30 and not over 31 pounds..	200.00	155.00	45.00	225.00	170.50	54.50	240.00	186.00	54.00
Over 31 and not over 32 pounds..	200.00	160.00	40.00	225.00	176.00	49.00	245.00	192.00	53.00
Over 32 and not over 33 pounds..	200.00	165.00	35.00	225.00	181.50	43.50	250.00	198.00	52.00
Over 33 and not over 34 pounds..	200.00	170.00	30.00	225.00	187.00	38.00	250.00	204.00	46.00
Over 34 and not over 35 pounds..	200.00	175.00	25.00	225.00	192.50	22.50	250.00	210.00	40.00
Over 35 and not over 36 pounds..	225.00	180.00	45.00	250.00	198.00	52.00	275.00	216.00	59.00
Over 36 and not over 37 pounds..	225.00	185.00	40.00	250.00	203.50	49.50	275.00	222.00	53.00
Over 37 and not over 38 pounds..	225.00	190.00	35.00	250.00	209.00	41.00	275.00	228.00	47.00
Over 38 and not over 39 pounds..	225.00	195.00	30.00	250.00	214.50	35.50	275.00	234.00	41.00
Over 39 and not over 40 pounds..	225.00	200.00	25.00	250.00	220.00	30.00	275.00	240.00	35.00
Over 40 and not over 41 pounds..	250.00	205.00	45.00	275.00	225.50	49.50	300.00	246.00	54.00
Over 41 and not over 42 pounds..	250.00	210.00	40.00	275.00	231.00	44.00	300.00	252.00	48.00
Over 42 and not over 43 pounds..	250.00	215.00	35.00	275.00	236.50	38.50	300.00	258.00	42.00
Over 43 and not over 44 pounds..	250.00	220.00	30.00	275.00	242.00	33.00	300.00	264.00	36.00
Over 44 and not over 45 pounds..	250.00	225.00	25.00	275.00	247.50	27.50	300.00	270.00	30.00
Over 45 and not over 46 pounds..	250.00	230.00	20.00	275.00	253.00	22.00	300.00	276.00	24.00
Over 46 and not over 47 pounds..	250.00	235.00	15.00	275.00	258.50	16.50	300.00	282.00	18.00
Over 47 and not over 48 pounds..	250.00	240.00	10.00	275.00	264.00	11.00	300.00	288.00	12.00
Over 48 and not over 49 pounds..	250.00	245.00	5.00	275.00	269.50	5.50	300.00	294.00	6.00
Over 49 and not over 50 pounds..	250.00	250.00	.....	275.00	275.00	.....	300.00	300.00	.....
Total.....	.....	.....	2,015.00	.....	.....	2,368.50	.....	.....	2,215.00
Average.....	.....	.....	40.30	.....	.....	47.37	.....	.....	44.30



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$6.50.			\$7.			\$7.50.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	6.50	23.50	30.00	7.00	23.00	30.00	7.50	22.50
Over 1 and not over 2 pounds.....	35.00	13.00	22.00	35.00	14.00	21.00	35.00	15.00	20.00
Over 2 and not over 3 pounds.....	45.00	19.50	25.50	45.00	21.00	24.00	45.00	22.50	22.50
Over 3 and not over 4 pounds.....	60.00	25.00	35.00	60.00	28.00	32.00	60.00	30.00	30.00
Over 4 and not over 5 pounds.....	80.00	32.50	47.50	80.00	35.00	45.00	80.00	37.50	42.50
Over 5 and not over 6 pounds.....	90.00	39.00	51.00	90.00	42.00	48.00	90.00	45.00	45.00
Over 6 and not over 7 pounds.....	100.00	45.50	54.50	100.00	49.00	51.00	100.00	52.50	47.50
Over 7 and not over 8 pounds.....	120.00	52.00	68.00	120.00	56.00	64.00	120.00	60.00	60.00
Over 8 and not over 9 pounds.....	120.00	58.50	61.50	120.00	63.00	57.00	125.00	67.50	57.50
Over 9 and not over 10 pounds.....	120.00	65.00	55.00	120.00	70.00	50.00	125.00	75.00	50.00
Over 10 and not over 11 pounds....	150.00	71.50	78.50	150.00	77.00	73.00	150.00	82.50	67.50
Over 11 and not over 12 pounds....	150.00	78.00	72.00	150.00	84.00	66.00	150.00	90.00	60.00
Over 12 and not over 13 pounds....	150.00	84.50	65.50	150.00	91.00	59.00	150.00	97.50	52.50
Over 13 and not over 14 pounds....	150.00	91.00	59.00	150.00	98.00	57.00	150.00	105.00	45.00
Over 14 and not over 15 pounds....	150.00	97.50	52.50	150.00	105.00	45.00	160.00	112.50	47.50
Over 15 and not over 16 pounds....	175.00	104.00	71.00	175.00	112.00	63.00	185.00	120.00	65.00
Over 16 and not over 17 pounds....	175.00	110.50	64.50	175.00	119.00	56.00	195.00	127.50	67.50
Over 17 and not over 18 pounds....	175.00	117.00	58.00	175.00	126.00	49.00	200.00	135.00	65.00
Over 18 and not over 19 pounds....	175.00	123.50	51.50	175.00	133.00	42.00	200.00	142.50	57.50
Over 19 and not over 20 pounds....	175.00	130.00	45.00	175.00	140.00	35.00	200.00	150.00	50.00
Over 20 and not over 21 pounds....	200.00	136.50	63.50	200.00	147.00	53.00	225.00	157.50	67.50
Over 21 and not over 22 pounds....	200.00	143.00	57.00	200.00	154.00	46.00	225.00	165.00	60.00
Over 22 and not over 23 pounds....	200.00	149.50	50.50	200.00	161.00	39.00	225.00	172.50	52.50
Over 23 and not over 24 pounds....	200.00	156.00	44.00	200.00	168.00	32.00	225.00	180.00	45.00
Over 24 and not over 25 pounds....	200.00	162.50	37.50	200.00	175.00	25.00	225.00	187.50	37.50
Over 25 and not over 26 pounds....	225.00	169.00	56.00	225.00	182.00	43.00	250.00	195.00	55.00
Over 26 and not over 27 pounds....	235.00	175.50	59.50	235.00	189.00	46.00	260.00	202.50	57.50
Over 27 and not over 28 pounds....	245.00	182.00	63.00	245.00	196.00	49.00	270.00	210.00	60.00
Over 28 and not over 29 pounds....	250.00	188.50	61.50	250.00	203.00	47.00	275.00	217.50	57.50
Over 29 and not over 30 pounds....	250.00	195.00	55.00	250.00	210.00	40.00	275.00	225.00	50.00
Over 30 and not over 31 pounds....	275.00	201.50	73.50	275.00	217.00	58.00	300.00	232.50	67.50
Over 31 and not over 32 pounds....	275.00	208.00	67.00	275.00	224.00	51.00	310.00	240.00	70.00
Over 32 and not over 33 pounds....	275.00	214.50	60.50	275.00	231.00	44.00	315.00	247.50	67.50
Over 33 and not over 34 pounds....	275.00	221.00	54.00	275.00	238.00	37.00	315.00	255.00	60.00
Over 34 and not over 35 pounds....	275.00	227.50	47.50	275.00	245.00	30.00	315.00	262.50	52.50
Over 35 and not over 36 pounds....	300.00	234.00	66.00	300.00	252.00	48.00	340.00	270.00	70.00
Over 36 and not over 37 pounds....	300.00	240.50	59.50	310.00	259.00	51.00	350.00	277.50	72.50
Over 37 and not over 38 pounds....	315.00	247.00	68.00	320.00	266.00	54.00	350.00	285.00	65.00
Over 38 and not over 39 pounds....	315.00	253.50	61.50	325.00	273.00	52.00	350.00	292.50	57.50
Over 39 and not over 40 pounds....	315.00	260.00	55.00	325.00	280.00	45.00	350.00	300.00	50.00
Over 40 and not over 41 pounds....	325.00	266.50	58.50	350.00	287.00	63.00	375.00	307.50	67.50
Over 41 and not over 42 pounds....	325.00	273.00	52.00	350.00	294.00	56.00	375.00	315.00	60.00
Over 42 and not over 43 pounds....	325.00	279.50	45.50	350.00	301.00	49.00	375.00	322.50	52.50
Over 43 and not over 44 pounds....	325.00	286.00	39.00	350.00	308.00	42.00	375.00	330.00	45.00
Over 44 and not over 45 pounds....	325.00	292.50	32.50	350.00	315.00	35.00	375.00	337.50	37.50
Over 45 and not over 46 pounds....	325.00	299.00	26.00	350.00	322.00	28.00	375.00	345.00	30.00
Over 46 and not over 47 pounds....	325.00	305.50	19.50	350.00	329.00	21.00	375.00	352.50	22.50
Over 47 and not over 48 pounds....	325.00	312.00	13.00	350.00	336.00	14.00	375.00	360.00	15.00
Over 48 and not over 49 pounds....	325.00	318.50	6.50	350.00	343.00	7.00	375.00	367.50	7.50
Over 49 and not over 50 pounds....	325.00	325.00	.....	350.00	350.00	.....	375.00	375.00	.....
Total.....	.....	.....	2,503.50	.....	.....	2,180.00	.....	.....	2,493.50
Average.....	.....	.....	50.07	.....	.....	43.60	.....	.....	49.87

TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$8.			\$8.50.			\$9.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	8.00	22.00	30.00	8.50	21.50	30.00	9.00	21.00
Over 1 and not over 2 pounds.....	35.00	16.00	19.00	35.00	17.00	18.00	35.00	18.00	17.00
Over 2 and not over 3 pounds.....	45.00	24.00	21.00	45.00	25.50	19.50	45.00	27.00	18.00
Over 3 and not over 4 pounds.....	60.00	32.00	28.00	60.00	34.00	26.00	60.00	36.00	24.00
Over 4 and not over 5 pounds.....	80.00	40.00	40.00	80.00	42.50	37.50	80.00	45.00	35.00
Over 5 and not over 6 pounds.....	90.00	48.00	42.00	90.00	51.00	39.00	90.00	54.00	36.00
Over 6 and not over 7 pounds.....	100.00	56.00	44.00	100.00	59.50	40.50	100.00	63.00	37.00
Over 7 and not over 8 pounds.....	120.00	64.00	56.00	120.00	68.00	52.00	120.00	72.00	45.00
Over 8 and not over 9 pounds.....	125.00	72.00	53.00	135.00	77.50	57.50	135.00	81.00	54.00
Over 9 and not over 10 pounds.....	125.00	80.00	45.00	135.00	85.00	50.00	135.00	90.00	45.00
Over 10 and not over 11 pounds....	150.00	88.00	62.00	160.00	93.50	66.50	160.00	99.00	61.00
Over 11 and not over 12 pounds....	150.00	96.00	54.00	170.00	102.00	68.00	170.00	108.00	62.00
Over 12 and not over 13 pounds....	150.00	104.00	46.00	175.00	110.50	64.50	175.00	117.00	58.00
Over 13 and not over 14 pounds....	150.00	112.00	38.00	175.00	119.00	56.00	175.00	126.00	49.00
Over 14 and not over 15 pounds....	160.00	120.00	40.00	175.00	127.50	47.50	175.00	135.00	40.00
Over 15 and not over 16 pounds....	185.00	128.00	57.00	200.00	136.00	64.00	200.00	144.00	56.00
Over 16 and not over 17 pounds....	195.00	136.00	59.00	200.00	144.50	55.50	200.00	153.00	47.00
Over 17 and not over 18 pounds....	200.00	144.00	56.00	200.00	153.00	47.00	200.00	162.00	38.00
Over 18 and not over 19 pounds....	200.00	152.00	48.00	200.00	161.50	38.50	200.00	171.00	29.00
Over 19 and not over 20 pounds....	200.00	160.00	40.00	200.00	170.00	30.00	200.00	180.00	20.00
Over 20 and not over 21 pounds....	225.00	168.00	57.00	225.00	178.50	46.50	225.00	189.00	36.00
Over 21 and not over 22 pounds....	225.00	176.00	49.00	235.00	187.00	48.00	235.00	198.00	37.00
Over 22 and not over 23 pounds....	225.00	184.00	41.00	245.00	195.50	49.50	245.00	207.00	38.00
Over 23 and not over 24 pounds....	225.00	192.00	33.00	250.00	204.00	46.00	250.00	216.00	34.00
Over 24 and not over 25 pounds....	225.00	200.00	25.00	250.00	212.50	37.50	250.00	225.00	25.00
Over 25 and not over 26 pounds....	250.00	208.00	42.00	275.00	221.00	54.00	275.00	234.00	41.00
Over 26 and not over 27 pounds....	260.00	216.00	44.00	285.00	229.50	55.50	285.00	243.00	42.00
Over 27 and not over 28 pounds....	270.00	224.00	46.00	295.00	238.00	57.00	295.00	252.00	43.00
Over 28 and not over 29 pounds....	275.00	232.00	43.00	300.00	246.50	53.50	300.00	261.00	39.00
Over 29 and not over 30 pounds....	275.00	240.00	35.00	300.00	255.00	45.00	300.00	270.00	30.00
Over 30 and not over 31 pounds....	300.00	248.00	52.00	325.00	263.50	61.50	325.00	279.00	46.00
Over 31 and not over 32 pounds....	310.00	256.00	54.00	335.00	272.00	63.00	335.00	288.00	47.00
Over 32 and not over 33 pounds....	320.00	264.00	56.00	345.00	280.50	64.50	345.00	297.00	48.00
Over 33 and not over 34 pounds....	325.00	272.00	53.00	350.00	289.00	61.00	350.00	306.00	44.00
Over 34 and not over 35 pounds....	325.00	280.00	45.00	350.00	297.50	52.50	350.00	315.00	35.00
Over 35 and not over 36 pounds....	350.00	288.00	62.00	375.00	306.00	69.00	375.00	324.00	51.00
Over 36 and not over 37 pounds....	350.00	296.00	54.00	375.00	314.50	60.50	375.00	333.00	42.00
Over 37 and not over 38 pounds....	350.00	304.00	46.00	375.00	323.00	52.00	375.00	342.00	33.00
Over 38 and not over 39 pounds....	350.00	312.00	38.00	375.00	331.50	43.50	375.00	351.00	24.00
Over 39 and not over 40 pounds....	350.00	320.00	30.00	375.00	340.00	35.00	375.00	360.00	15.00
Over 40 and not over 41 pounds....	375.00	328.00	47.00	405.00	348.50	56.50	405.00	369.00	36.00
Over 41 and not over 42 pounds....	385.00	336.00	49.00	410.00	357.00	53.00	410.00	378.00	32.00
Over 42 and not over 43 pounds....	395.00	344.00	51.00	420.00	365.50	54.50	420.00	387.00	33.00
Over 43 and not over 44 pounds....	400.00	352.00	48.00	425.00	374.00	51.00	435.00	396.00	39.00
Over 44 and not over 45 pounds....	400.00	360.00	40.00	425.00	382.50	42.50	450.00	405.00	45.00
Over 45 and not over 46 pounds....	400.00	368.00	32.00	425.00	391.00	34.00	450.00	414.00	36.00
Over 46 and not over 47 pounds....	400.00	376.00	24.00	425.00	399.50	25.50	450.00	423.00	27.00
Over 47 and not over 48 pounds....	400.00	384.00	16.00	425.00	408.00	17.00	450.00	432.00	18.00
Over 48 and not over 49 pounds....	400.00	392.00	8.00	425.00	416.50	8.50	450.00	441.00	9.00
Over 49 and not over 50 pounds....	400.00	400.00	.....	425.00	425.00	.....	450.00	450.00	.....
Total.....	.....	.....	2,090.00	.....	.....	2,296.50	.....	.....	1,820.00
Average.....	.....	.....	41.80	.....	.....	45.93	.....	.....	36.40



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$9.50.			\$10.			\$10.50.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	9.50	20.50	30.00	10.00	20.00	30.00	10.50	19.50
Over 1 and not over 2 pounds.....	35.00	19.00	16.00	35.00	20.00	15.00	35.00	21.00	14.00
Over 2 and not over 3 pounds.....	45.00	28.50	16.50	45.00	30.00	15.00	45.00	31.50	13.50
Over 3 and not over 4 pounds.....	60.00	38.00	22.00	60.00	40.00	20.00	60.00	42.00	18.00
Over 4 and not over 5 pounds.....	80.00	47.50	32.50	80.00	50.00	30.00	80.00	52.50	27.50
Over 5 and not over 6 pounds.....	90.00	57.00	33.00	90.00	60.00	30.00	90.00	63.00	27.00
Over 6 and not over 7 pounds.....	100.00	66.50	33.50	100.00	70.00	30.00	100.00	73.50	26.50
Over 7 and not over 8 pounds.....	120.00	76.00	44.00	120.00	80.00	40.00	120.00	84.00	36.00
Over 8 and not over 9 pounds.....	135.00	85.50	49.50	135.00	90.00	45.00	135.00	94.50	40.50
Over 9 and not over 10 pounds.....	140.00	95.00	45.00	140.00	100.00	40.00	140.00	105.00	35.00
Over 10 and not over 11 pounds....	160.00	104.50	55.50	160.00	110.00	50.00	160.00	115.50	44.50
Over 11 and not over 12 pounds....	175.00	114.00	61.00	175.00	120.00	55.00	175.00	126.00	49.00
Over 12 and not over 13 pounds....	185.00	123.50	61.50	185.00	130.00	55.00	185.00	136.50	48.50
Over 13 and not over 14 pounds....	200.00	133.00	67.00	200.00	140.00	60.00	200.00	147.00	53.00
Over 14 and not over 15 pounds....	200.00	142.50	57.50	200.00	150.00	50.00	200.00	157.50	42.50
Over 15 and not over 16 pounds....	225.00	152.00	73.00	225.00	160.00	65.00	225.00	168.00	57.00
Over 16 and not over 17 pounds....	230.00	161.50	68.50	235.00	170.00	65.00	235.00	178.50	56.50
Over 17 and not over 18 pounds....	230.00	171.00	59.00	245.00	180.00	65.00	245.00	199.00	46.00
Over 18 and not over 19 pounds....	230.00	180.50	49.50	250.00	190.00	60.00	250.00	209.50	40.50
Over 19 and not over 20 pounds....	230.00	190.00	40.00	250.00	200.00	50.00	250.00	210.00	40.00
Over 20 and not over 21 pounds....	260.00	199.50	60.50	275.00	210.00	65.00	275.00	220.50	54.50
Over 21 and not over 22 pounds....	270.00	209.00	61.00	285.00	220.00	65.00	285.00	231.00	54.00
Over 22 and not over 23 pounds....	280.00	218.50	61.50	295.00	230.00	65.00	295.00	241.50	53.50
Over 23 and not over 24 pounds....	285.00	228.00	57.00	300.00	240.00	60.00	300.00	252.00	48.00
Over 24 and not over 25 pounds....	285.00	237.50	47.50	300.00	250.00	50.00	325.00	262.50	62.50
Over 25 and not over 26 pounds....	315.00	247.00	68.00	325.00	260.00	65.00	340.00	273.00	67.00
Over 26 and not over 27 pounds....	325.00	256.50	68.50	325.00	270.00	55.00	350.00	283.50	66.50
Over 27 and not over 28 pounds....	325.00	266.00	59.00	325.00	280.00	45.00	365.00	294.00	71.00
Over 28 and not over 29 pounds....	325.00	275.50	49.50	325.00	290.00	35.00	365.00	304.50	60.50
Over 29 and not over 30 pounds....	325.00	285.00	40.00	325.00	300.00	25.00	365.00	315.00	50.00
Over 30 and not over 31 pounds....	350.00	294.50	55.50	350.00	310.00	40.00	390.00	325.50	64.50
Over 31 and not over 32 pounds....	360.00	304.00	56.00	360.00	320.00	40.00	400.00	336.00	64.00
Over 32 and not over 33 pounds....	370.00	313.50	56.50	370.00	330.00	40.00	410.00	346.50	63.50
Over 33 and not over 34 pounds....	375.00	323.00	52.00	375.00	340.00	35.00	415.00	357.00	58.00
Over 34 and not over 35 pounds....	375.00	332.50	42.50	375.00	350.00	25.00	415.00	367.50	47.50
Over 35 and not over 36 pounds....	400.00	342.00	58.00	400.00	360.00	40.00	440.00	378.00	62.00
Over 36 and not over 37 pounds....	410.00	351.50	58.50	410.00	370.00	40.00	450.00	388.50	61.50
Over 37 and not over 38 pounds....	415.00	361.00	54.00	420.00	380.00	40.00	460.00	399.00	61.00
Over 38 and not over 39 pounds....	415.00	370.50	44.50	425.00	390.00	35.00	465.00	409.50	55.50
Over 39 and not over 40 pounds....	415.00	380.00	35.00	425.00	400.00	25.00	465.00	420.00	45.00
Over 40 and not over 41 pounds....	445.00	389.50	55.50	450.00	410.00	40.00	490.00	430.50	59.50
Over 41 and not over 42 pounds....	450.00	399.00	51.00	460.00	420.00	40.00	500.00	441.00	59.00
Over 42 and not over 43 pounds....	460.00	408.50	51.50	470.00	430.00	40.00	510.00	451.50	58.50
Over 43 and not over 44 pounds....	475.00	418.00	57.00	475.00	440.00	35.00	515.00	462.00	53.00
Over 44 and not over 45 pounds....	475.00	427.50	47.50	475.00	450.00	25.00	515.00	472.50	42.50
Over 45 and not over 46 pounds....	475.00	437.00	38.00	500.00	460.00	40.00	525.00	483.00	42.00
Over 46 and not over 47 pounds....	475.00	446.50	28.50	500.00	470.00	30.00	525.00	493.50	31.50
Over 47 and not over 48 pounds....	475.00	456.00	19.00	500.00	480.00	20.00	525.00	504.00	21.00
Over 48 and not over 49 pounds....	475.00	465.50	9.50	500.00	490.00	10.00	525.00	514.50	10.50
Over 49 and not over 50 pounds....	475.00	475.00	.....	500.00	500.00	.....	525.00	525.00	.....
Total.....	.....	.....	2,347.50	.....	.....	2,030.00	.....	.....	2,332.00
Average.....	.....	.....	46.95	.....	.....	40.60	.....	.....	46.64



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$11.			\$11.50.			\$12.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	11.00	19.00	30.00	11.50	18.50	30.00	12.00	18.00
Over 1 and not over 2 pounds.....	35.00	22.00	13.00	35.00	23.00	12.00	35.00	24.00	11.00
Over 2 and not over 3 pounds.....	45.00	33.00	12.00	45.00	34.50	10.50	45.00	36.00	9.00
Over 3 and not over 4 pounds.....	60.00	44.00	16.00	60.00	46.00	14.00	60.00	48.00	12.00
Over 4 and not over 5 pounds.....	80.00	55.00	25.00	80.00	57.50	22.50	80.00	60.00	20.00
Over 5 and not over 6 pounds.....	90.00	66.00	24.00	90.00	69.00	21.00	90.00	72.00	18.00
Over 6 and not over 7 pounds.....	100.00	77.00	23.00	100.00	70.50	29.50	100.00	84.00	16.00
Over 7 and not over 8 pounds.....	120.00	88.00	32.00	120.00	82.00	38.00	120.00	96.00	26.00
Over 8 and not over 9 pounds.....	135.00	99.00	36.00	135.00	93.50	41.50	135.00	108.00	27.00
Over 9 and not over 10 pounds.....	140.00	110.00	30.00	140.00	115.00	25.00	140.00	120.00	20.00
Over 10 and not over 11 pounds....	160.00	121.00	39.00	160.00	126.50	33.50	160.00	132.00	28.00
Over 11 and not over 12 pounds....	175.00	132.00	43.00	175.00	138.00	37.00	175.00	144.00	31.00
Over 12 and not over 13 pounds....	185.00	143.00	42.00	185.00	149.50	35.50	185.00	156.00	29.00
Over 13 and not over 14 pounds....	200.00	154.00	46.00	200.00	161.00	34.00	200.00	168.00	32.00
Over 14 and not over 15 pounds....	200.00	165.00	35.00	215.00	172.50	32.50	215.00	180.00	35.00
Over 15 and not over 16 pounds....	225.00	176.00	49.00	230.00	184.00	46.00	230.00	192.00	38.00
Over 16 and not over 17 pounds....	235.00	187.00	48.00	240.00	195.50	44.50	240.00	204.00	36.00
Over 17 and not over 18 pounds....	245.00	198.00	47.00	260.00	207.00	53.00	260.00	216.00	44.00
Over 18 and not over 19 pounds....	250.00	209.00	41.00	275.00	218.50	56.50	275.00	228.00	47.00
Over 19 and not over 20 pounds....	250.00	220.00	30.00	275.00	230.00	45.00	275.00	240.00	35.00
Over 20 and not over 21 pounds....	275.00	231.00	44.00	300.00	241.50	58.50	300.00	252.00	48.00
Over 21 and not over 22 pounds....	285.00	242.00	43.00	310.00	253.00	57.00	310.00	264.00	46.00
Over 22 and not over 23 pounds....	295.00	253.00	42.00	320.00	264.50	55.50	320.00	276.00	44.00
Over 23 and not over 24 pounds....	310.00	264.00	46.00	335.00	276.00	59.00	335.00	288.00	47.00
Over 24 and not over 25 pounds....	325.00	275.00	50.00	350.00	287.50	62.50	350.00	300.00	50.00
Over 25 and not over 26 pounds....	340.00	286.00	54.00	365.00	299.00	66.00	365.00	312.00	53.00
Over 26 and not over 27 pounds....	350.00	297.00	53.00	375.00	310.50	64.50	375.00	324.00	51.00
Over 27 and not over 28 pounds....	370.00	308.00	62.00	395.00	332.00	63.00	395.00	336.00	59.00
Over 28 and not over 29 pounds....	375.00	319.00	56.00	400.00	343.50	56.50	400.00	348.00	52.00
Over 29 and not over 30 pounds....	375.00	330.00	45.00	400.00	345.00	55.00	400.00	360.00	40.00
Over 30 and not over 31 pounds....	400.00	341.00	59.00	425.00	356.50	68.50	425.00	372.00	53.00
Over 31 and not over 32 pounds....	410.00	352.00	58.00	435.00	368.00	67.00	435.00	384.00	51.00
Over 32 and not over 33 pounds....	420.00	363.00	57.00	445.00	379.50	65.50	445.00	396.00	49.00
Over 33 and not over 34 pounds....	425.00	374.00	51.00	460.00	391.00	69.00	460.00	408.00	52.00
Over 34 and not over 35 pounds....	425.00	385.00	40.00	465.00	402.50	62.50	475.00	420.00	55.00
Over 35 and not over 36 pounds....	450.00	396.00	54.00	490.00	414.00	76.00	490.00	432.00	58.00
Over 36 and not over 37 pounds....	460.00	407.00	53.00	500.00	425.50	74.50	500.00	444.00	56.00
Over 37 and not over 38 pounds....	470.00	418.00	52.00	510.00	437.00	73.00	520.00	456.00	64.00
Over 38 and not over 39 pounds....	475.00	429.00	46.00	515.00	448.50	66.50	525.00	468.00	57.00
Over 39 and not over 40 pounds....	475.00	440.00	35.00	515.00	460.00	55.00	525.00	480.00	45.00
Over 40 and not over 41 pounds....	500.00	451.00	49.00	540.00	471.50	68.50	550.00	492.00	58.00
Over 41 and not over 42 pounds....	510.00	462.00	48.00	550.00	483.00	67.00	560.00	504.00	56.00
Over 42 and not over 43 pounds....	520.00	473.00	47.00	560.00	494.50	65.50	570.00	516.00	54.00
Over 43 and not over 44 pounds....	525.00	484.00	41.00	565.00	506.00	59.00	575.00	528.00	47.00
Over 44 and not over 45 pounds....	525.00	495.00	30.00	565.00	517.50	47.50	575.00	540.00	35.00
Over 45 and not over 46 pounds....	550.00	506.00	44.00	575.00	529.00	46.00	600.00	552.00	48.00
Over 46 and not over 47 pounds....	550.00	517.00	33.00	575.00	540.50	34.50	600.00	564.00	36.00
Over 47 and not over 48 pounds....	550.00	528.00	22.00	575.00	552.00	23.00	600.00	576.00	24.00
Over 48 and not over 49 pounds....	550.00	539.00	11.00	575.00	563.50	11.50	600.00	588.00	12.00
Over 49 and not over 50 pounds....	550.00	550.00	.....	575.00	575.00	.....	600.00	600.00	.....
Total .....	.....	.....	1,975.00	.....	.....	2,362.50	.....	.....	1,932.00
Average .....	.....	.....	39.50	.....	.....	47.25	.....	.....	38.64

TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$12.50.			\$13.			\$13.50.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	12.50	17.50	30.00	13.00	17.00	30.00	13.50	16.50
Over 1 and not over 2 pounds.....	35.00	25.00	10.00	35.00	26.00	9.00	35.00	27.00	8.00
Over 2 and not over 3 pounds.....	45.00	37.50	7.50	45.00	39.00	6.00	45.00	40.50	4.50
Over 3 and not over 4 pounds.....	60.00	50.00	10.00	60.00	52.00	8.00	60.00	54.00	6.00
Over 4 and not over 5 pounds.....	80.00	62.50	17.50	80.00	65.00	15.00	80.00	67.50	12.50
Over 5 and not over 6 pounds.....	90.00	75.00	15.00	90.00	78.00	12.00	90.00	81.00	9.00
Over 6 and not over 7 pounds.....	100.00	87.50	12.50	100.00	91.00	9.00	105.00	94.50	10.50
Over 7 and not over 8 pounds.....	120.00	100.00	20.00	120.00	104.00	16.00	120.00	108.00	12.00
Over 8 and not over 9 pounds.....	135.00	112.50	22.50	135.00	117.00	18.00	135.00	121.50	13.50
Over 9 and not over 10 pounds.....	140.00	125.00	15.00	140.00	130.00	10.00	150.00	135.00	15.00
Over 10 and not over 11 pounds....	160.00	137.50	22.50	160.00	143.00	17.00	165.00	148.50	16.50
Over 11 and not over 12 pounds....	175.00	150.00	25.00	175.00	156.00	19.00	180.00	162.00	18.00
Over 12 and not over 13 pounds....	185.00	162.50	22.50	185.00	169.00	16.00	195.00	175.50	19.50
Over 13 and not over 14 pounds....	200.00	175.00	25.00	200.00	182.00	18.00	210.00	189.00	21.00
Over 14 and not over 15 pounds....	215.00	187.50	27.50	215.00	195.00	20.00	215.00	202.50	12.50
Over 15 and not over 16 pounds....	230.00	200.00	30.00	230.00	208.00	22.00	240.00	216.00	24.00
Over 16 and not over 17 pounds....	240.00	212.50	27.50	240.00	221.00	19.00	250.00	229.50	20.50
Over 17 and not over 18 pounds....	260.00	225.00	35.00	260.00	234.00	26.00	260.00	243.00	17.00
Over 18 and not over 19 pounds....	275.00	237.50	37.50	275.00	247.00	28.00	275.00	256.50	18.50
Over 19 and not over 20 pounds....	275.00	250.00	25.00	275.00	260.00	15.00	285.00	270.00	15.00
Over 20 and not over 21 pounds....	300.00	262.50	37.50	300.00	273.00	27.00	305.00	283.50	21.50
Over 21 and not over 22 pounds....	310.00	275.00	35.00	310.00	286.00	24.00	320.00	297.00	23.00
Over 22 and not over 23 pounds....	320.00	287.50	32.50	320.00	299.00	21.00	330.00	310.50	19.50
Over 23 and not over 24 pounds....	335.00	300.00	35.00	335.00	312.00	23.00	345.00	324.00	21.00
Over 24 and not over 25 pounds....	350.00	312.50	37.50	350.00	325.00	25.00	350.00	337.50	12.50
Over 25 and not over 26 pounds....	365.00	325.00	40.00	365.00	338.00	27.00	375.00	351.00	24.00
Over 26 and not over 27 pounds....	375.00	337.50	37.50	375.00	351.00	24.00	385.00	364.50	20.50
Over 27 and not over 28 pounds....	395.00	350.00	45.00	395.00	364.00	31.00	395.00	378.00	17.00
Over 28 and not over 29 pounds....	400.00	362.50	37.50	400.00	377.00	23.00	410.00	391.50	18.50
Over 29 and not over 30 pounds....	400.00	375.00	25.00	400.00	390.00	10.00	420.00	405.00	15.00
Over 30 and not over 31 pounds....	425.00	387.50	37.50	425.00	403.00	22.00	440.00	418.50	21.50
Over 31 and not over 32 pounds....	435.00	400.00	35.00	435.00	416.00	19.00	455.00	432.00	23.00
Over 32 and not over 33 pounds....	445.00	412.50	32.50	445.00	429.00	16.00	465.00	445.50	19.50
Over 33 and not over 34 pounds....	460.00	425.00	35.00	460.00	442.00	18.00	480.00	459.00	21.00
Over 34 and not over 35 pounds....	475.00	437.50	37.50	475.00	455.00	20.00	490.00	472.50	17.50
Over 35 and not over 36 pounds....	490.00	450.00	40.00	490.00	468.00	22.00	510.00	486.00	24.00
Over 36 and not over 37 pounds....	500.00	462.50	37.50	500.00	481.00	19.00	525.00	499.50	25.50
Over 37 and not over 38 pounds....	520.00	475.00	45.00	520.00	494.00	26.00	535.00	513.00	22.00
Over 38 and not over 39 pounds....	525.00	487.50	37.50	525.00	507.00	18.00	550.00	526.50	23.50
Over 39 and not over 40 pounds....	525.00	500.00	25.00	525.00	520.00	5.00	560.00	540.00	20.00
Over 40 and not over 41 pounds....	550.00	512.50	37.50	550.00	533.00	17.00	580.00	553.50	26.50
Over 41 and not over 42 pounds....	560.00	525.00	35.00	560.00	546.00	14.00	595.00	567.00	28.00
Over 42 and not over 43 pounds....	570.00	537.50	32.50	570.00	559.00	11.00	600.00	580.50	19.50
Over 43 and not over 44 pounds....	575.00	550.00	25.00	575.00	572.00	3.00	615.00	594.00	21.00
Over 44 and not over 45 pounds....	585.00	562.50	22.50	585.00	585.00	.....	625.00	607.50	17.50
Over 45 and not over 46 pounds....	610.00	575.00	35.00	610.00	598.00	12.00	645.00	621.00	24.00
Over 46 and not over 47 pounds....	620.00	587.50	32.50	620.00	611.00	9.00	660.00	634.50	25.50
Over 47 and not over 48 pounds....	625.00	600.00	25.00	630.00	624.00	6.00	675.00	648.00	27.00
Over 48 and not over 49 pounds....	625.00	612.50	12.50	645.00	637.00	8.00	675.00	661.50	13.50
Over 49 and not over 50 pounds....	625.00	625.00	.....	650.00	650.00	.....	675.00	675.00	.....
Total.....	.....	.....	1,372.50	.....	.....	820.00	.....	.....	902.50
Average.....	.....	.....	27.45	.....	.....	16.40	.....	.....	18.05



TABLE 1.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—					
	\$14.			\$14.50.		
	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	30.00	14.00	16.00	35.00	14.50	20.50
Over 1 and not over 2 pounds.....	35.00	28.00	7.00	40.00	29.00	11.00
Over 2 and not over 3 pounds.....	45.00	42.00	3.00	50.00	43.50	6.50
Over 3 and not over 4 pounds.....	60.00	56.00	4.00	65.00	58.00	7.00
Over 4 and not over 5 pounds.....	80.00	70.00	10.00	85.00	72.50	12.50
Over 5 and not over 6 pounds.....	90.00	84.00	6.00	100.00	87.00	13.00
Over 6 and not over 7 pounds.....	105.00	98.00	7.00	115.00	101.50	13.50
Over 7 and not over 8 pounds.....	120.00	112.00	8.00	130.00	116.00	14.00
Over 8 and not over 9 pounds.....	135.00	126.00	9.00	150.00	130.50	19.50
Over 9 and not over 10 pounds.....	150.00	140.00	10.00	165.00	145.00	20.00
Over 10 and not over 11 pounds.....	165.00	154.00	11.00	180.00	159.50	20.50
Over 11 and not over 12 pounds.....	180.00	168.00	12.00	195.00	174.00	21.00
Over 12 and not over 13 pounds.....	195.00	182.00	13.00	215.00	188.50	26.50
Over 13 and not over 14 pounds.....	210.00	196.00	14.00	230.00	203.00	27.00
Over 14 and not over 15 pounds.....	215.00	210.00	5.00	235.00	217.50	17.50
Over 15 and not over 16 pounds.....	240.00	224.00	16.00	260.00	232.00	28.00
Over 16 and not over 17 pounds.....	250.00	238.00	12.00	275.00	246.50	28.50
Over 17 and not over 18 pounds.....	260.00	252.00	8.00	285.00	261.00	24.00
Over 18 and not over 19 pounds.....	275.00	266.00	9.00	300.00	275.50	24.50
Over 19 and not over 20 pounds.....	285.00	280.00	5.00	300.00	290.00	10.00
Over 20 and not over 21 pounds.....	305.00	294.00	11.00	315.00	304.50	10.50
Over 21 and not over 22 pounds.....	320.00	308.00	12.00	330.00	319.00	11.00
Over 22 and not over 23 pounds.....	330.00	322.00	8.00	345.00	333.50	11.50
Over 23 and not over 24 pounds.....	345.00	336.00	9.00	360.00	348.00	12.00
Over 24 and not over 25 pounds.....	350.00	350.00	.....	375.00	362.50	12.50
Over 25 and not over 26 pounds.....	375.00	364.00	11.00	390.00	377.00	13.00
Over 26 and not over 27 pounds.....	385.00	378.00	7.00	405.00	391.50	13.50
Over 27 and not over 28 pounds.....	395.00	392.00	3.00	420.00	406.00	14.00
Over 28 and not over 29 pounds.....	410.00	406.00	4.00	430.00	420.50	9.50
Over 29 and not over 30 pounds.....	420.00	420.00	.....	450.00	435.00	15.00
Over 30 and not over 31 pounds.....	440.00	434.00	6.00	465.00	449.50	15.50
Over 31 and not over 32 pounds.....	455.00	448.00	7.00	480.00	464.00	16.00
Over 32 and not over 33 pounds.....	465.00	462.00	3.00	495.00	478.50	16.50
Over 33 and not over 34 pounds.....	480.00	476.00	4.00	510.00	493.00	17.00
Over 34 and not over 35 pounds.....	490.00	490.00	.....	525.00	507.50	17.50
Over 35 and not over 36 pounds.....	510.00	504.00	6.00	540.00	522.00	18.00
Over 36 and not over 37 pounds.....	525.00	518.00	7.00	555.00	536.50	18.50
Over 37 and not over 38 pounds.....	535.00	532.00	3.00	570.00	551.00	19.00
Over 38 and not over 39 pounds.....	550.00	546.00	4.00	585.00	565.50	19.50
Over 39 and not over 40 pounds.....	560.00	560.00	.....	600.00	580.00	20.00
Over 40 and not over 41 pounds.....	580.00	574.00	6.00	615.00	594.50	20.50
Over 41 and not over 42 pounds.....	595.00	588.00	7.00	630.00	609.00	21.00
Over 42 and not over 43 pounds.....	600.00	602.00	2.00	640.00	623.50	16.50
Over 43 and not over 44 pounds.....	620.00	616.00	4.00	660.00	638.00	22.00
Over 44 and not over 45 pounds.....	630.00	630.00	.....	670.00	652.50	17.50
Over 45 and not over 46 pounds.....	645.00	644.00	1.00	690.00	667.00	23.00
Over 46 and not over 47 pounds.....	660.00	658.00	2.00	705.00	681.50	23.50
Over 47 and not over 48 pounds.....	675.00	672.00	3.00	720.00	706.00	14.00
Over 48 and not over 49 pounds.....	690.00	686.00	4.00	725.00	720.50	4.50
Over 49 and not over 50 pounds.....	700.00	700.00	.....	725.00	725.00	.....
Total.....	.....	.....	317.00	.....	.....	817.50
Average.....	.....	.....	6.34	.....	.....	16.35

<sup>1</sup> Less than the pound rate.



TABLE I.—Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.

	When merchandise rate per 100 pounds is—								
	\$15.			\$15.50.			\$16.		
	1	2	3	1	2	2	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	35.00	15.00	20.00	35.00	15.50	19.50	35.00	16.00	19.00
Over 1 and not over 2 pounds.....	40.00	30.00	10.00	40.00	31.00	9.00	40.00	32.00	8.00
Over 2 and not over 3 pounds.....	50.00	45.00	5.00	50.00	46.50	3.50	50.00	48.00	2.00
Over 3 and not over 4 pounds.....	65.00	60.00	5.00	65.00	62.00	3.00	65.00	64.00	1.00
Over 4 and not over 5 pounds.....	85.00	75.00	10.00	85.00	77.50	7.50	85.00	80.00	5.00
Over 5 and not over 6 pounds.....	100.00	90.00	10.00	100.00	93.00	7.00	100.00	96.00	4.00
Over 6 and not over 7 pounds.....	115.00	105.00	10.00	115.00	108.50	6.50	115.00	112.00	3.00
Over 7 and not over 8 pounds.....	130.00	120.00	10.00	130.00	124.00	6.00	130.00	128.00	2.00
Over 8 and not over 9 pounds.....	150.00	135.00	15.00	150.00	139.50	10.50	150.00	144.00	6.00
Over 9 and not over 10 pounds.....	165.00	150.00	15.00	165.00	155.00	10.00	165.00	160.00	5.00
Over 10 and not over 11 pounds.....	180.00	165.00	15.00	180.00	170.50	9.50	180.00	176.00	4.00
Over 11 and not over 12 pounds.....	195.00	180.00	15.00	195.00	186.00	9.00	195.00	192.00	3.00
Over 12 and not over 13 pounds.....	215.00	195.00	20.00	215.00	201.50	13.50	215.00	208.00	7.00
Over 13 and not over 14 pounds.....	230.00	210.00	20.00	230.00	217.00	13.00	230.00	224.00	6.00
Over 14 and not over 15 pounds.....	235.00	225.00	10.00	245.00	232.50	12.50	245.00	240.00	5.00
Over 15 and not over 16 pounds.....	260.00	240.00	20.00	260.00	248.00	12.00	260.00	256.00	4.00
Over 16 and not over 17 pounds.....	275.00	255.00	20.00	280.00	263.50	16.50	280.00	272.00	8.00
Over 17 and not over 18 pounds.....	285.00	270.00	15.00	295.00	279.00	16.00	295.00	288.00	7.00
Over 18 and not over 19 pounds.....	300.00	285.00	15.00	310.00	294.50	15.50	310.00	304.00	6.00
Over 19 and not over 20 pounds.....	300.00	300.00	.....	310.00	310.00	.....	320.00	320.00	.....
Total.....	.....	.....	250.00	.....	.....	200.00	.....	.....	105.00
Average.....	.....	.....	13.00	.....	.....	10.00	.....	.....	5.25

	When merchandise rate per 100 pounds is—								
	\$16.50.			\$17.			\$17.50.		
	1	2	3	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	35.00	16.50	18.50	35.00	17.00	18.00	35.00	17.50	17.50
Over 1 and not over 2 pounds.....	45.00	33.00	12.00	45.00	34.00	11.00	45.00	35.00	10.00
Over 2 and not over 3 pounds.....	55.00	49.50	5.50	55.00	51.00	4.00	60.00	52.50	7.50
Over 3 and not over 4 pounds.....	75.00	66.00	9.00	75.00	68.00	7.00	75.00	70.00	5.00
Over 4 and not over 5 pounds.....	90.00	82.50	7.50	90.00	85.00	5.00	95.00	87.50	7.50
Over 5 and not over 6 pounds.....	110.00	99.00	11.00	110.00	102.00	8.00	120.00	105.00	15.00
Over 4 and not over 7 pounds.....	125.00	115.50	9.50	125.00	119.00	6.00	135.00	122.50	12.50
Over 7 and not over 8 pounds.....	145.00	132.00	13.00	145.00	136.00	9.00	150.00	140.00	10.00
Over 8 and not over 9 pounds.....	165.00	148.50	16.50	165.00	153.00	12.00	170.00	157.50	12.50
Over 9 and not over 10 pounds.....	175.00	165.00	10.00	175.00	170.00	5.00	180.00	175.00	5.00
Over 10 and not over 11 pounds.....	200.00	181.50	18.50	200.00	187.00	13.00	210.00	192.50	17.50
Over 11 and not over 12 pounds.....	200.00	198.00	2.00	220.00	204.00	16.00	225.00	210.00	15.00
Over 12 and not over 13 pounds.....	230.00	214.50	15.50	230.00	221.00	9.00	240.00	227.50	12.50
Over 13 and not over 14 pounds.....	250.00	231.00	19.00	250.00	238.00	12.00	255.00	245.00	10.00
Over 14 and not over 15 pounds.....	290.00	247.50	12.50	260.00	255.00	5.00	275.00	262.50	12.50
Over 15 and not over 16 pounds.....	285.00	264.00	21.00	285.00	272.00	13.00	300.00	280.00	20.00
Over 16 and not over 17 pounds.....	300.00	280.50	19.50	300.00	289.00	11.00	315.00	297.50	17.50
Over 17 and not over 18 pounds.....	315.00	297.00	18.00	315.00	306.00	9.00	330.00	315.00	15.00
Over 18 and not over 19 pounds.....	330.00	313.50	16.50	335.00	323.00	12.00	350.00	342.50	7.50
Over 19 and not over 20 pounds.....	330.00	330.00	.....	340.00	340.00	.....	350.00	350.00	.....
Total.....	.....	.....	255.00	.....	.....	185.00	.....	.....	230.00
Average.....	.....	.....	12.75	.....	.....	9.25	.....	.....	11.50

TABLE I.—*Analysis of the table of graduated charges employed by the express companies in assessing charges upon packages of the weights specified therein—Continued.*

	When merchandise rate per 100 pounds is—					
	\$18.			\$18.50.		
	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	35.00	18.00	17.00	40.00	18.50	21.50
Over 1 and not over 2 pounds.....	45.00	36.00	9.00	50.00	37.00	13.00
Over 2 and not over 3 pounds.....	60.00	54.00	6.00	60.00	55.50	4.50
Over 3 and not over 4 pounds.....	75.00	72.00	3.00	80.00	74.00	6.00
Over 4 and not over 5 pounds.....	95.00	90.00	5.00	100.00	92.50	7.50
Over 5 and not over 6 pounds.....	120.00	108.00	12.00	120.00	111.00	9.00
Over 6 and not over 7 pounds.....	135.00	126.00	9.00	140.00	129.50	10.50
Over 7 and not over 8 pounds.....	150.00	144.00	6.00	160.00	148.00	12.00
Over 8 and not over 9 pounds.....	170.00	162.00	8.00	180.00	166.50	13.50
Over 9 and not over 10 pounds.....	180.00	180.00	.....	200.00	185.00	15.00
Over 10 and not over 11 pounds.....	210.00	198.00	12.00	220.00	203.50	16.50
Over 11 and not over 12 pounds.....	225.00	216.00	9.00	240.00	222.00	18.00
Over 12 and not over 13 pounds.....	240.00	234.00	6.00	260.00	240.50	19.50
Over 13 and not over 14 pounds.....	255.00	252.00	3.00	280.00	259.00	21.00
Over 14 and not over 15 pounds.....	275.00	270.00	5.00	300.00	277.50	22.50
Over 15 and not over 16 pounds.....	300.00	288.00	12.00	320.00	296.00	24.00
Over 16 and not over 17 pounds.....	315.00	306.00	9.00	340.00	314.50	25.50
Over 17 and not over 18 pounds.....	330.00	324.00	6.00	360.00	333.00	27.00
Over 18 and not over 19 pounds.....	350.00	342.00	8.00	370.00	351.50	18.50
Over 19 and not over 20 pounds.....	360.00	360.00	.....	370.00	370.00	.....
Total.....	.....	.....	145.00	.....	.....	305.00
Average.....	.....	.....	7.25	.....	.....	15.25

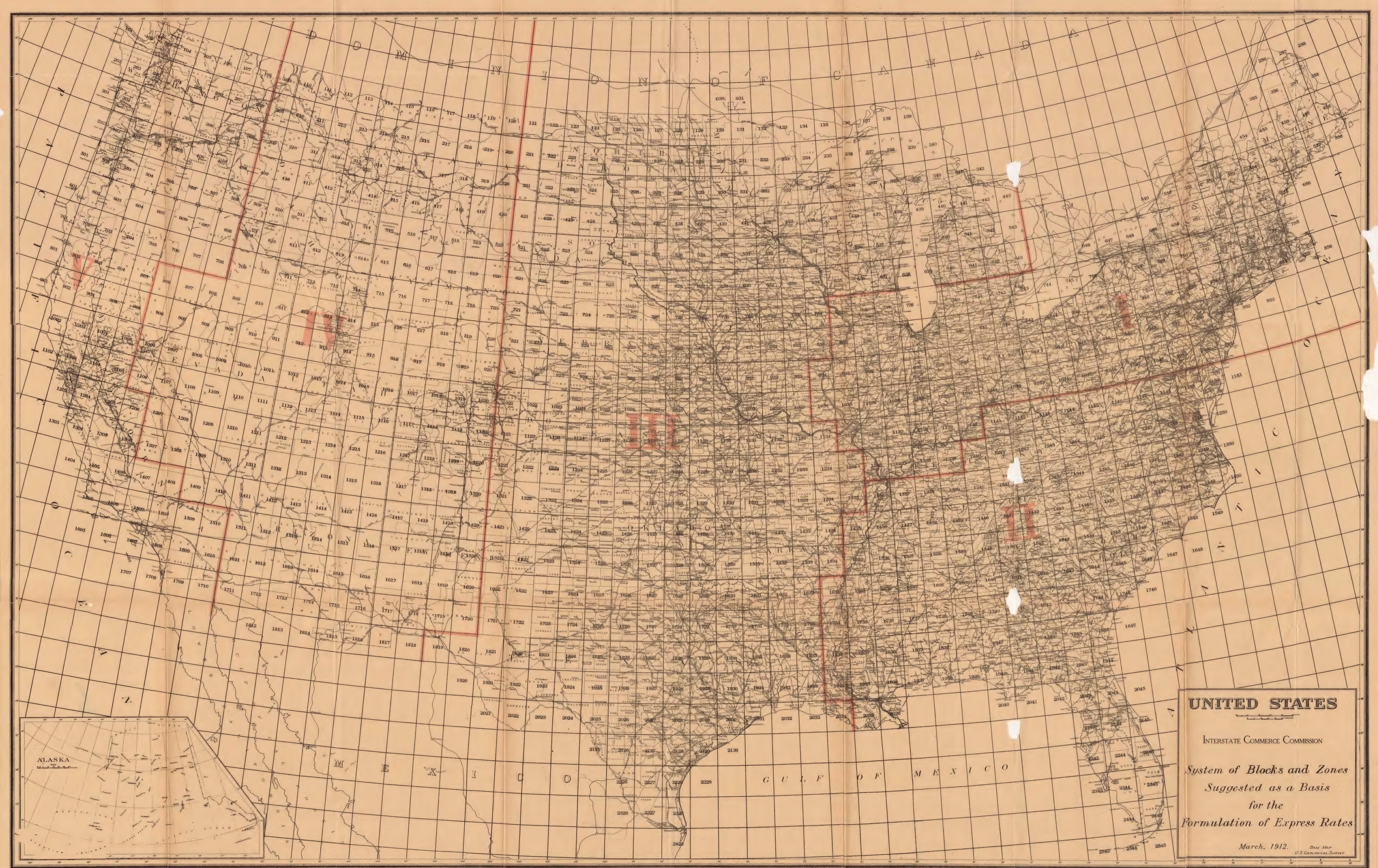
	When merchandise rate per 100 pounds is—					
	\$19.			\$20.		
	1	2	3	1	2	3
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Packages not over 1 pound.....	40.00	19.00	21.00	40.00	20.00	20.00
Over 1 and not over 2 pounds.....	50.00	38.00	12.00	50.00	40.00	10.00
Over 2 and not over 3 pounds.....	60.00	57.00	3.00	60.00	60.00	.....
Over 3 and not over 4 pounds.....	80.00	76.00	4.00	80.00	80.00	.....
Over 4 and not over 5 pounds.....	100.00	95.00	5.00	100.00	100.00	.....
Over 5 and not over 6 pounds.....	120.00	114.00	6.00	120.00	120.00	.....
Over 6 and not over 7 pounds.....	140.00	133.00	7.00	140.00	140.00	.....
Over 7 and not over 8 pounds.....	160.00	152.00	8.00	160.00	160.00	.....
Over 8 and not over 9 pounds.....	180.00	171.00	9.00	180.00	180.00	.....
Over 9 and not over 10 pounds.....	200.00	190.00	10.00	200.00	200.00	.....
Over 10 and not over 11 pounds.....	220.00	209.00	11.00	220.00	220.00	.....
Over 11 and not over 12 pounds.....	240.00	228.00	12.00	240.00	240.00	.....
Over 12 and not over 13 pounds.....	260.00	247.00	13.00	260.00	260.00	.....
Over 13 and not over 14 pounds.....	280.00	266.00	14.00	280.00	280.00	.....
Over 14 and not over 15 pounds.....	300.00	285.00	15.00	300.00	300.00	.....
Over 15 and not over 16 pounds.....	320.00	304.00	16.00	320.00	320.00	.....
Over 16 and not over 17 pounds.....	340.00	323.00	17.00	340.00	340.00	.....
Over 17 and not over 18 pounds.....	360.00	342.00	18.00	360.00	360.00	.....
Over 18 and not over 19 pounds.....	380.00	361.00	19.00	380.00	380.00	.....
Over 19 and not over 20 pounds.....	380.00	380.00	.....	400.00	400.00	.....
Total.....	.....	.....	220.00	.....	.....	30.00
Average.....	.....	.....	11.00	.....	.....	1.50











# UNITED STATES

INTERSTATE COMMERCE COMMISSION

*System of Blocks and Zones  
Suggested as a Basis  
for the  
Formulation of Express Rates*

March, 1912.

Base Map  
U.S. GEOLOGICAL SURVEY



## SECTION II.

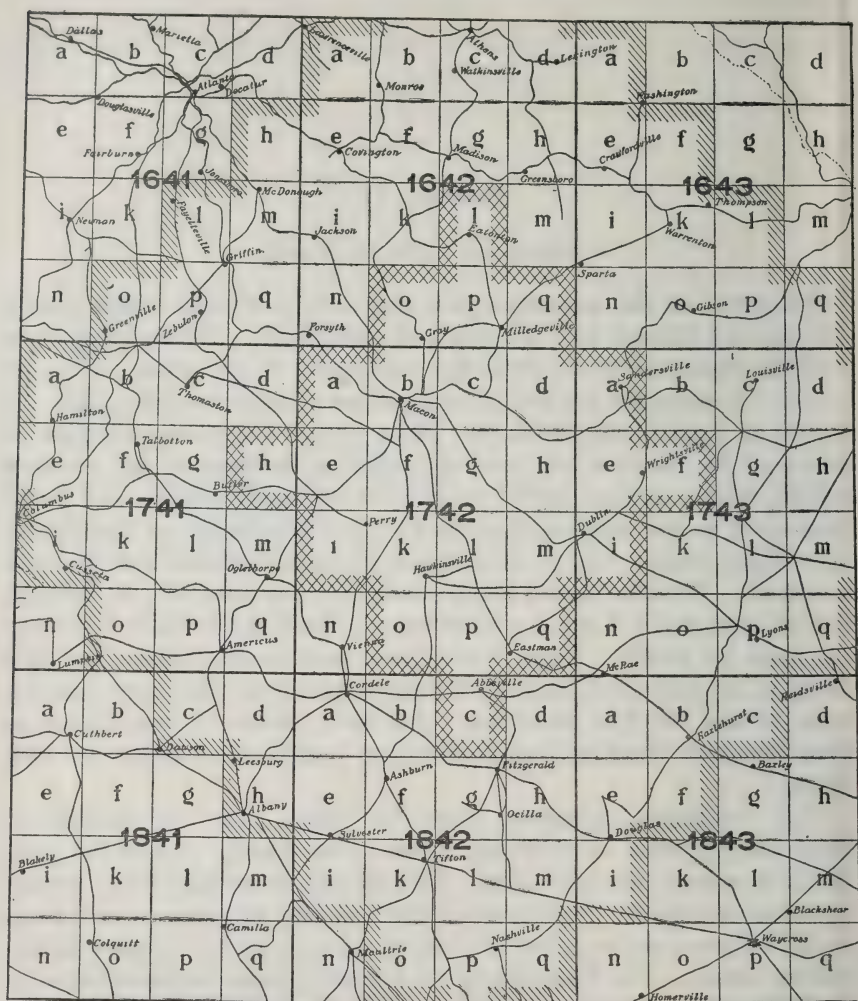
### METHOD OF STATING RATES.

Reference to the accompanying map of the United States shows the country divided into 5 zones and 950 blocks. These zones have nothing whatever to do with the statement of the rates. That is to say, the rates are not stated as from one zone to another; they are stated as from block to block. These grand territorial divisions or zones of the country are used as outlining sections of the country within which similar traffic conditions generally obtain and have been used in the making of rates by the Commission to this extent only: That within each of these zones the same uniform rate is made to obtain. Whether a rate is within one zone or runs into or through two or more zones is not a matter which affects the method of stating the rates by blocks. These zones have been marked upon this map solely as an indication that within the territory so delimited uniform rates obtain for like distances. All rates, however, are stated as from block to block and make common points of all points in each block.

This statement, however, must be taken with one limitation: That for purposes of avoiding injustice to nearby points the sub-block or square has been used. This square is nothing but a subdivision of the block. The block is divided into 16 squares, and from each of these squares rates are stated to each of the squares in adjoining blocks. The diagram on the following page can be referred to for illustration of this sub-block method of making rates as applied to one of the sub-blocks in Georgia (No. 1742-G).



Diagram illustrating the method of subdividing blocks into sub-blocks or squares for the purpose of stating short-haul rates.



The shaded portions represent, approximately, radial zones within each of which the rates from sub-block No. 1742g will be made to apply equally.

The points within the first shaded zone take common rates from g; the points within the second, or outside shaded zone, also take common rates from the same central sub-block. Each one of these lettered sub-blocks or squares is the center of a new zone of short-distance rates.

The tariff publications necessary to properly set forth the rates in conformity with the preceding statements will consist of a single sheet of paper on which all the rates between any one block and all other blocks may be printed in a table conforming to that here next following. This table sets forth in full the scale numbers of the rates applying between Block 532 (St. Paul-Minneapolis, etc.) and all other blocks between which rates have thus far been computed.

In this table may be found the rates applying from Block 532 to all other blocks in the United States to which rates have been made. The principal points in Block 532 are St. Paul in Square D and Minneapolis in Square C. Other places located in this block are:

Chaska, Minn., in Square B.  
 New Prague, Minn., in Square F.  
 Farmington, Minn., in Square H.  
 Northfield, Minn., in Square M.  
 Faribault, Minn., in Square L.  
 Kasota, Minn., in Square I.  
 Mankato, Minn., in Square N.  
 Waseca, Minn., in Square P.  
 Owatonna, Minn., in Square Q.

To find the rate applying from any one of the above points to Kansas City, Mo., which is the principal point in Block 1031, or to any of the other points located in Block 1031, find the number 1031 in the column headed Block No., and opposite it will be found the Scale No. 39.

The rates provided by Scale No. 39 are for 5 pounds, 31 cents; 10 pounds, 42 cents; 25 pounds, 76 cents; 100 pounds, \$2.45.

Other points in Block 1031 are:

Independence, Mo., Square O.  
 Napoleon, Mo., Square Q.  
 Lawson, Mo., Square M.  
 Maysville, Mo., Square C.  
 Plattsburg, Mo., Square G.  
 Leavenworth, Kans., Square I.

Rate Table I.

Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.
101		227		404	144	521		632	(a)	743		853	
102		228	26	405	140	522		633	(a)	744		854	
103	151	229		406	136	523		634	13	745		855	
104	153	230		407		524		635		746		856	
105		231		408		525		636		747		901	
106	140	232		409		526		637		748		902	
107	136	233		410		527		638		749		903	
108	133	234		411		528		639	35	750		904	
109	121	235		412		529		640	39	751		905	
110	112	236		413		530		641	42	752	56	906	
111	103	237		414	85	531	(a)	642		753	60	907	
112	94	238		415	82	532	(a)	643		754	68	908	
113		239		416	78	533	(a)	646		755		909	
114	84	240		417	74	534	13	647		801		910	
115	81	256		418		535	18	648		802		911	
116	81	257		419		536	22	649		803		912	
117	77	258		420		537	26	650		804		913	
118	73	301		421		538	30	651		805		914	
119	69	302	153	422		539		652		806		915	
120	61	303	151	423		540		653		807		916	
121	57	304		424	42	541		654	80	808		917	
122	54	305	141	425	35	542		655		809		918	
123	50	306	133	426	30	543		656		810		919	
124		307	133	427	26	549		701		811		920	
125	42	308	129	428	22	550		702		812		921	
126	39	309		429	18	551		703		813		922	
127	35	310		430		552		704		814		923	
128		311	108	431	(a)	553		705		815		924	
129		312	104	432	(a)	554		706		816		925	
130		313	94	433	(a)	555		707		817		926	
131		314	85	434	8	556	82	708		818		927	
132		315	82	435		557		709		819		928	
133		316	78	436		558		710		820		929	
134		317	70	437		559		711		821	64	930	
135		318	70	438		601		712		822		931	35
136		319	66	439		602		713		823		932	
137		320	62	440		603		714		824		933	
138		321	54	441		604		715		825		934	26
139		322	50	442		605		716		826		935	
201		323	46	443		606		717		827		936	28
202		324		454		607		718		828		937	30
203	151	325	39	455		608		719		829		938	
204	145	326	35	456		609		720		830	26	939	34
205	140	327	26	457		610		721		831		940	36
206		328	22	458		611		722		832	26	941	41
207	133	329	18	501		612		723		833		942	43
208	125	330		502		613		724		834		943	44
209	122	331		503		614		725		835	23	944	46
210	117	332		504		615		726		836	23	945	47
211	108	333		505		616		727		837		946	50
212		334		506		617		728		838	25	947	52
213		335		507		618		729	18	839	32	948	54
214		336		508		619		730		840		949	58
215		337		509		620		731		841		950	
216		338		510		621		732	18	842		951	62
217		339		511		622		733	13	843		952	64
218		340		512		623		734	18	844	46	953	66
219		341		513		624		735	21	845		1002	
220		342		514		625		736	29	846		1003	
221		355		515		626		737	31	847		1004	
222		356		516		627		738	33	848		1005	
223		357		517		628		739	33	849		1006	
224		358		518		629		740		850		1007	
225		402		519		630		741	41	851		1008	
226		403	150	520		631	(a)	742	54	852		1009	

• See Table II.



Rate Table I—Continued.

Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.	Block No.	Scale No.
1010		1130	50	1304		1427		1606		1734		1943	87
1011		1131	46	1305		1428		1607		1735	58	1944	84
1012		1132		1306		1429		1608		1736	55	2021	
1013		1133		1307		1430	60	1609		1737	66	2022	
1014		1134		1308		1431		1610		1738		2023	
1015		1135	46	1309		1432		1611		1739		2024	
1016		1136	34	1310		1433		1612		1740		2025	
1017		1137	39	1311		1434		1613		1741		2026	
1018		1138		1312		1435		1614		1742	75	2027	
1019		1139		1313		1436	48	1615		1743		2028	
1020		1140		1314		1437	46	1616		1744		2029	
1021	67	1141		1315		1438	54	1617		1745		2030	94
1022		1142	42	1316		1439	53	1618		1746		2031	98
1023		1143	43	1317		1440	58	1619		1812		2032	
1024		1144	47	1318		1441		1620	94	1813		2033	
1025		1145		1319		1442		1621		1814		2034	
1026		1146		1320		1443		1622		1815		2035	70
1027		1147		1321		1444		1623		1816		2036	
1028		1148	60	1322		1445		1624		1817		2040	
1029		1149		1323	73	1446		1625		1818		2041	
1030	39	1150	66	1324	70	1447		1626		1819	105	2042	
1031	39	1203		1325		1448	70	1627		1820		2043	
1032		1204		1326		1449		1628		1821		2044	96
1033		1205		1327		1450		1629	73	1822		2045	
1034	35	1206		1328		1505		1630		1823		2125	
1035		1207		1329		1506		1631		1824		2126	
1036	32	1208		1330	57	1507	178	1632		1825		2127	
1037	37	1209		1331		1508		1633		1826		2128	109
1038	41	1210		1332		1509	167	1634		1827		2129	105
1039		1211		1333		1510	164	1635		1828		2130	102
1040		1212		1334		1511	156	1636	52	1829		2143	
1041	39	1213		1335		1512		1637	63	1830	83	2144	
1042	44	1214		1336	41	1513		1638		1831		2145	99
1043	46	1215		1337	44	1514		1639	61	1832		2226	
1044	47	1216		1338	46	1515		1640		1833		2227	
1045	51	1217		1339	51	1516		1641	66	1834		2228	113
1046	52	1218		1340		1517		1642	72	1835	61	2229	
1047	54	1219		1341		1518		1643		1836		2243	
1048	58	1220		1342		1519		1644		1837	72	2244	
1049	62	1221	79	1343		1520	90	1645		1838		2245	104
1050	60	1222	73	1344		1521		1646		1839	73	2326	
1051		1223		1345		1522		1647		1840		2327	
1102		1224		1346		1523		1648		1841		2328	
1103		1225	64	1347		1524		1707		1842		2343	
1104		1226	60	1348		1525		1708		1843	78	2344	
1105		1227	57	1349	70	1526		1709		1844	81	2345	106
1106		1228		1350		1527		1710		1845		2428	124
1107		1229		1404		1528		1711		1920		2444	
1108		1230	57	1405		1529		1712		1921		2445	109
1109		1231		1406		1530	70	1713		1922		2543	
1110		1232		1407		1531		1714		1923		2544	115
1111		1233		1408		1532		1715		1924		2545	113
1112		1234		1409		1533		1716		1925			
1113		1235		1410		1534		1717		1926			
1114		1236	37	1411		1535		1718		1927			
1115		1237		1412	144	1536	50	1719		1928			
1116		1238	44	1413		1537	60	1720	98	1929			
1117		1239		1414	136	1538		1721		1930	86		
1118		1240		1415		1539		1722		1931			
1119		1241		1416	122	1540	58	1723		1932			
1120		1242		1417		1541	60	1724		1933			
1121		1243		1418	109	1542		1725		1934			
1122		1244		1419	104	1543		1726		1935	67		
1123	70	1245	52	1420	90	1544		1727		1936			
1124		1246	58	1421		1545		1728		1937	78		
1125		1247		1422	79	1546		1729		1938	79		
1126		1248	64	1423		1547		1730	79	1939			
1127		1249		1424		1548	79	1731		1940			
1128		1250		1425		1549		1732		1941			
1129	46	1303		1426		1605		1733		1942			

The preceding table, which is self-explanatory, is planned to embrace all rates between Block 532 and all blocks in the United States except the eight blocks adjoining and surrounding it. A second table is necessary to state the "sub-block" rates between the 16 squares of each of these nine blocks. These rates are set forth in the scale numbers opposite the lettered squares of each block in the column directly under the letter designating the square of the central block (No. 532) in which the shipment originated in the following table:

### Rate Table II.

Applying between each square in Block 532, of which St. Paul and Minneapolis are the principal points, and each square in the eight adjoining and surrounding blocks.

TO FIND THE RATE APPLYING BETWEEN ST. PAUL AND ELLSWORTH, WIS.

St. Paul is in Block 532, Square D. Ellsworth, Wis., is in Block 533, Square G. In the column headed D, opposite the number 533 G will be found the number 8. This indicates that Scale No. 8 applies. The rate for 5 pounds in Scale No. 8 is 23 cents; 10 pounds, 27 cents; 25 pounds, 37 cents; 50 pounds, 47 cents; 100 pounds, 57 cents.

### EXPLANATION.

To find the scale number applying from any square in Block 532 to any square in any other block find the letter by which the square in Block 532 is designated in the heading of the table. Follow the perpendicular line down to where it intersects the horizontal line on which is located the number and the letter indicating the square in which the destination is located. At the intersection will be found the number of the rate scale to be used.

To—	From Block No. 532, square letter—																To—	From Block No. 532, square letter—																				
	Block No.	Square letter.	A	B	C	D	E	F	G	H	I	K	L	M	N	O		P	Q	Block No.	Square letter.	A	B	C	D	E	F	G	H	I	K	L	M	N	O	P	Q	
431.....	13	A	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	A	13	13	13	13	13	13	13	13	13	13	13	13	13	13	8	8	13
431.....	13	B	8	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	B	8	13	13	13	13	13	13	13	13	13	13	13	13	13	8	8	8
431.....	13	C	8	13	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	C	8	8	13	13	13	13	13	13	13	13	13	13	13	13	8	8	8
431.....	13	D	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	D	8	8	8	13	13	13	13	13	13	13	13	13	13	13	8	8	8
431.....	13	E	8	13	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	E	8	8	8	8	13	13	13	13	13	13	13	13	13	13	8	8	8
431.....	13	F	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	F	8	8	8	8	8	13	13	13	13	13	13	13	13	13	8	8	8
431.....	13	G	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	G	8	8	8	8	8	8	13	13	13	13	13	13	13	13	8	8	8
431.....	13	H	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	H	8	8	8	8	8	8	8	13	13	13	13	13	13	13	8	8	8
431.....	13	I	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	I	8	8	8	8	8	8	8	8	13	13	13	13	13	13	8	8	8
431.....	13	K	8	8	13	8	13	13	13	13	13	13	13	13	13	13	13	13	631.....	13	K	8	8	8	8	8	8	8	8	8	13	13	13	13	13	8	8	8
431.....	13	L	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	L	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
431.....	13	M	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	M	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
431.....	13	N	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	N	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
431.....	13	O	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	O	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
431.....	13	P	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	P	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8
431.....	13	Q	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	631.....	13	Q	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8	8







## SAMPLE PAGE OF DIRECTORY.

## A.

Aberdeen, S. Dak., 427 G.  
 Aitkin, Minn., 329 F.  
 Akinsville, Mo., 1133 E.  
 Alamagordo, Tex., 1720 A.  
 Albany, Ga., 1841 I.  
 Albany, N. Y., 752 E.  
 Albany, Oreg., 502 H.  
 Albuquerque, N. Mex., 1419 O.  
 Aldrich, Mo., 1232 F.  
 Alma, Mo., 1032 O.  
 Alpine, Tex., 1922 K.  
 Amity, Oreg., 402 Q.  
 Anabel, Mo., 1033 G.  
 Arcade, N. Y., 747 G.  
 Ardmore, Mo., 1033 F.  
 Argyle, Mo., 1133 M.  
 Arlington, Mo., 1234 A.  
 Armstrong, Mo., 1033 K.  
 Ash Fork, Ariz., 1413 K.  
 Ash Grove, Mo., 1232 K.  
 Ashburn, Mo., 1033 H.  
 Ashland, Oreg., 703 O.  
 Ashland, Wye., 335 E.  
 Ashtabula, Ohio, 845 A.  
 Astoria, Oreg., 302 N.  
 Atlanta, Ga., 1641 C.  
 Atlanta, Mo., 1033 C.  
 Atlantic City, N. J., 1051 L.  
 Attica, N. Y., 747 B.  
 Augusta, Ga., 1644 I.  
 Aulville, Mo., 1032 O.  
 Aurora Springs, Mo., 1133 K.  
 Austin, Tex., 1923 K.  
 Auxvasse, Mo., 1033 N.  
 Axtell, Mo., 1033 C.

## B.

Bagnelle, Mo., 1133 O.  
 Bakersfield, Cal., 1406 M.  
 Belmont, N. Y., 747 Q.  
 Baltimore, Md., 1049 K.  
 Bangert, Mo., 1234 B.  
 Barnesville, Minn., 329 G.  
 Barnett, Mo., 1133 K.  
 Barnstable, Mass., 855 G.  
 Barstow, Cal., 1508 D.  
 Bartlett, Mo., 1234 P.  
 Baton Rouge, La., 1934 M.  
 Beaman, Mo., 1132 D.  
 Beaufort, Mo., 1134 M.  
 Belle, Mo., 1134 K.  
 Bellflower, Mo., 1034 P.  
 Bellingham, Wash., 103 C.  
 Benton City, Mo., 1034 N.  
 Berger, Mo., 1134 G.  
 Bernheimer, Mo., 1134 G.  
 Billings, Mo., 1232 O.  
 Billingsville, Mo., 1133 A.  
 Birmingham, Ala., 1639 I.  
 Bisbee, Ariz., 1816 I.  
 Bismark, N. Dak., 325 A.  
 Blackburn, Mo., 1032 P.  
 Bland, Mo., 1134 K.  
 Blairstown, Mo., 1132 E.  
 Bloomington, Mo., 1033 B.  
 Bluffton, Mo., 1134 F.  
 Bogard, Mo., 1032 K.  
 Bolivar, Mo., 1232 G.  
 Bonnots Mill, Mo., 1134 E.  
 Boonville, Mo., 1133 B.

Boston, Mass., 754 M.  
 Bosworth, Mo., 1032 L.  
 Bottineau, N. Dak., 125 C.  
 Bourbon, Mo., 1134 Q.  
 Bowen, Mo., 1132 F.  
 Bowling Green, Mo., 1034 M.  
 Bowman, N. Dak., 322 P.  
 Brainerd, Minn., 331 M.  
 Brandon, Mo., 1132 G.  
 Braymer, Mo., 1032 E.  
 Breckenridge, Mo., 1032 A.  
 Briscoe, Mo., 1034 Q.  
 Brookfield, Mo., 1032 D.  
 Brookline, Mo., 1232 P.  
 Brooklyn, N. Y., 952 E.  
 Brookville, Pa., 846 Q.  
 Brownington, Mo., 1132 K.  
 Browns Station, Mo., 1033 P.  
 Brownsville, Oreg., 503 I.  
 Brownsville, Tex., 2428 C.  
 Brunswick, Mo., 1032 M.  
 Brush Creek, Mo., 1232 F.  
 Bucklin, Mo., 1033 A.  
 Buell, Mo., 1034 P.  
 Buffalo, N. Y., 747 A.  
 Burton, Mo., 1033 O.  
 Busch, Mo., 1034 H.  
 Butte, Mont., 313 O.

## C.

Cabool, Mo., 1233 Q.  
 Cairo, Mo., 1033 G.  
 Calhoun, Mo., 1132 K.  
 California, Mo., 1133 F.  
 Caliao, Mo., 1033 B.  
 Canaan, Mo., 1134 K.  
 Carlow, Mo., 1032 A.  
 Carrington, Mo., 1133 D.  
 Carrington, N. Dak., 226 L.  
 Carrollton, Mo., 1032 K.  
 Case, Mo., 1134 G.  
 Castleton, N. Dak., 328 D.  
 Cattaragus, N. Y., 747 I.  
 Cedar City, Mo., 1133 H.  
 Cedar Gap, Mo., 1233 N.  
 Center, Mo., 1034 F.  
 Centerview, Mo., 1132 E.  
 Centralia, Mo., 1033 Q.  
 Chamois, Mo., 1134 E.  
 Charleston, S. C., 1746 A.  
 Charleston, W. Va., 1144 I.  
 Chattanooga, Tenn., 1440 P.  
 Chehalis, Wash., 303 E.  
 Cheyenne, Wyo., 821 N.  
 Chicago, Ill., 838 B.  
 Chickasha, Okla., 1428 N.  
 Chico, Cal., 1004 E.  
 Chilhowee, Mo., 1132 E.  
 Chillicothe, Mo., 1032 B.  
 Chula, Mo., 1032 C.  
 Cincinnati, Ohio, 1041 O.  
 Clarence, Mo., 1033 G.  
 Clark, Mo., 1033 L.  
 Clarksburg, Mo., 1133 F.  
 Claysville, Mo., 1133 G.  
 Clayton, 1530 G.  
 Cleveland, Ohio, 844 F.  
 Clever, Mo., 1232 P.  
 Clifton, Ariz., 1616 Q.  
 Clifton Hill, Mo., 1033 K.  
 Clinton, Mo., 1132 I.  
 Cluquot, Mo., 1232 G.

Coffeyton, Mo., 1134 P.  
 Cole Camp, Mo., 1132 M.  
 Colfax, Wash., 308 C.  
 Columbia, Ga., 1741 I.  
 Columbia, Mo., 1133 C.  
 Columbia, S. C., 1645 A.  
 Columbus, Ohio, 1043 A.  
 Colville, Wash., 108 E.  
 Concordia, Mo., 1132 B.  
 Conway Morgan, Mo., 1233 I.  
 Cook Station, Mo., 1234 C.  
 Coopertown, N. Dak., 227 L.  
 Corder, Mo., 1032 O.  
 Corpus Christi, Tex., 2228 C.  
 Corvallis, Oreg., 502 H.  
 Cowgill, Mo., 1032 E.  
 Crocker, Mo., 1233 C.  
 Crookston, Minn., 229 C.  
 Cuba, Mo., 1134 P.  
 Curryville, Mo., 1034 L.  
 Cyrene, Mo., 1034 M.

## D.

Dallas, Tex., 1729 A.  
 Dalton, Mo., 1033 L.  
 Danville, Ind., 1039 B.  
 Davis, Mo., 1034 Q.  
 Decatur, Ill., 1037 A.  
 Deepwater, Mo., 1132 I.  
 Deming, N. Mex., 1718 O.  
 Denton, Mo., 1132 E.  
 Denver, Colo., 1021 E.  
 Depew, N. Y., 747 B.  
 Detroit, Mich., 742 M.  
 Detroit, Minn., 330 A.  
 Devils Lake, N. Dak., 127 N.  
 De Witt, Mo., 1032 M.  
 Diggins, Mo., 1233 N.  
 Dillon, Mo., 1234 B.  
 Dover, Del., 1050 O.  
 Duluth, Minn., 333 D.  
 Dunnegan, Mo., 1232 F.  
 Durham, Mo., 1034 B.  
 Durham, N. C., 1347 N.

## E.

Eagle Pass, Tex., 2125 F.  
 Easley, Mo., 1133 C.  
 Easton, Pa., 950 D.  
 Edgewood, Mo., 1034 M.  
 El Centro, Cal., 1710 C.  
 Eldon, Mo., 1133 K.  
 Elliott, Mo., 1033 L.  
 Elmer, Mo., 1033 B.  
 El Paso, Tex., 1819 G.  
 Elston, Mo., 1133 G.  
 Elwood, Mo., 1232 P.  
 Emma, Mo., 1132 C.  
 Enon, Mo., 1133 L.  
 Estell, Mo., 1033 O.  
 Ethel, Mo., 1033 A.  
 Etiah, Mo., 1134 G.  
 Etterville, Mo., 1133 L.  
 Eudora, Mo., 1232 K.  
 Eugene, Mo., 1133 L.  
 Eureka, Cal., 901 D.  
 Evansville, Mo., 1033 L.  
 Evelyn, Mo., 1033 A.  
 Everton, Mo., 1232 K.  
 Excello, Mo., 1033 G.

The foregoing is submitted as an illustration of the form of a directory of express offices in which the name of each office is followed by a number and letter, designating the number of the block and letter of the square in which it is located. It is incomplete, and illustrative and tentative only.

With this directory and the two tariff tables previously printed, one may find the rate scale number applying between two given points, thus:

1. Consult directory to learn in what block the place of destination is located.

2. Having found the number of the block, consult tariff table No. 1 and find the rate scale number applying opposite the block number shown in the directory as that of the point of destination.

3. Having ascertained the number of the rate scale applying, turn next to the table of those scales and consult that one whereof the number is the same as that stated as applicable to the block number of the point of destination.

A full set of these rate scales, reading from 55 cents for a 100-pound package up to \$15 for a 100-pound package, will be found in the order of the Commission hereto attached.

Following are three additional Rate Tables II, which are included to illustrate the application of sub-block rates in zones 1, 2, and 4, the preceding table illustrating the application thereof in zones 3 and 5.

24 I. C. C.









[illegible]

A B C D E F G H I K L M N O P Q A B C D E F G H I K L M N O P Q

[illegible]

A B C D E F G H I K L M N O P Q A B C D E F G H I K L M N O P Q

[illegible]

A B C D E F G H I K L M N O P Q A B C D E F G H I K L M N O P Q

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Rate Table II.

Showing the numbers of the rate scales applying between each square in Block 1349 of which Norfolk, Va., is the principal point and each square in the eight adjoining and surrounding blocks.

TO FIND THE RATES APPLYING BETWEEN NORFOLK, VA., AND WELDON, N. C.

Norfolk, Va., is in Block 1349, Square C. Weldon, N. C., is in Block 1348, Square K. In the column headed C, opposite the number 1348 K, will be found No. 7. This indicates that scale 7 applies. The rate for 5 pounds in scale 7 is 23 cents; 10 pounds, 26 cents; 25 pounds, 36 cents; 100 pounds, 85 cents.

## EXPLANATION.

To find the scale number applying from any square in Block 1349 to any square in any other block, find the letter by which the square in Block 1349 is designated in the heading of the table. Follow the perpendicular line down to where it intersects the horizontal line on which is located the number and letter indicating the square in which the destination is located. At the intersection will be found the number of the rate scale to be used.

To—		From Block No. 1349, square letter—																To—		From Block No. 1349, square letter—															
Block No.	Square letter.	A	B	C	D	E	F	G	H	I	K	L	M	N	O	P	Q	Block No.	Square letter.	A	B	C	D	E	F	G	H	I	K	L	M	N	O	P	Q
		1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348			1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348	1348
248	A	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	1448	A	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	
248	B	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	B	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	C	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1448	C	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
248	D	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	D	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	E	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	E	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	F	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	F	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	G	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	G	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	H	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	H	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	I	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	I	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	K	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	K	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	L	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1448	L	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
248	M	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	M	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	N	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	N	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	O	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	1448	O	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
248	P	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	P	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	
248	Q	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	1448	Q	7	7	7	7	7	7	7	7	7	7	7	7	7	7	7	



No. 3422.

RED "C" OIL MANUFACTURING COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

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*Submitted May 18, 1912. Decided June 6, 1912.*

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A rule of the southern classification, effective August 1, 1910, excludes from transportation benzine, gasoline, and naphtha when contained in wooden barrels. The complainant alleges that this rule is unreasonable and will subject shippers of petroleum products to great loss and damage. These articles are inflammable liquids with extremely low flash points, and the rule to which exception is taken is for the preservation of life and property. While we have not yet prohibited the use of wooden barrels as containers for the transportation of these commodities, the trades as well as the carriers recognize the greater safety of iron or steel drums of proper construction, and we can not condemn the rule. Case dismissed.

*C. D. Chamberlin* for complainant.

*Albert S. Brandeis, R. Walton Moore, W. A. Colston, M. P. Callaway, and Nelson W. Proctor* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case brings in issue the reasonableness of a rule of the southern classification, effective August 1, 1910, which requires shipments of benzine, gasoline, and naphtha to be made in metal drums and metal barrels. Prior to that date throughout the major portion of the southern territory and via the lines of most of the defendants the use of wooden barrels had been permitted.

Benzine, gasoline, and naphtha are inflammable liquids having flash points at or below 20° in the Fahrenheit scale. For many years the Louisville & Nashville Railroad Company has exacted higher rates on shipments of these liquids when contained in wooden barrels than when carried in iron drums or barrels. In the year 1907 the southern carriers investigated the transportation of inflammable liquids, and in November, 1908, served notice on all shippers that new rules with respect to the transportation of such articles would soon be made effective. At the request of the shippers the effective date of



these rules was postponed from time to time, and it was not until August 1, 1910, that the rule in question was finally adopted.

The Red "C" Oil Manufacturing Company, having knowledge of the proposed rule, filed this complaint July 28, 1910, in which it alleged that the "regulation restricting shipments of benzine, gasoline, and naphtha to iron drums and iron barrels is unjust, unreasonable, prejudicial, and will subject complainant and others similarly situated to great loss and damage"; and prayed that the proposed regulation be suspended, and that after due hearing the defendants be restrained from enforcing it.

The schedule containing the regulation to which objection was taken was not suspended, but testimony was taken, and the case was set down for argument. In the meantime, however, the Commission had entered into a general investigation concerning the transportation of dangerous articles other than explosives, and argument of this case was postponed until after the Commission had passed upon the general subject matter. When the Commission issued its regulations, effective October 1, 1911, it said, in a note to rule 1824:

The Commission has not deemed it best at this time to prohibit the use of good wooden barrels in shipping inflammable liquids with a flash point below 20° F. It is, however, expected that their use will be gradually discontinued and that within a reasonable time metal barrels will come into general use for such shipments.

Complainant insists that the Commission has not prohibited the use of good wooden barrels in shipping inflammable liquids with a flash point below 20° F., and that it follows that what the Commission has not done these defendants should not be permitted to do. It is urged that in other sections of the country benzine, gasoline, and naphtha are now carried by the railroads in wooden barrels, and that it is a hardship to complainant to be compelled to supply iron barrels or drums for all shipments in southeastern territory.

Obviously we did not recommend the use of wooden barrels in the transportation of these inflammable liquids by the note quoted above. The only reason we did not prohibit their use at once was that shippers might have time to provide themselves with metal containers. In southern classification territory all shippers had two years' advance information of the proposed rule, and now nearly two years have elapsed since it became effective. Surely four years is time enough within which to secure sufficient containers for all of complainant's shipments.

The efforts of the Commission, of the railways through their bureau for the safe transportation of explosives and other dangerous articles, and of the shippers must be directed toward one end—the preservation of life and property. The only difficulty is that individuals are liable to differ as to the best means for attaining this end.

At this time to order these defendants to strike this rule from their classification and to permit the unrestricted use of wooden barrels in the transportation of inflammable liquids would be to take a backward step. Complainant has large sections of the country in which the use of the wooden barrels still remaining on its hands is permitted, and it would be contrary to the best judgment of all parties to extend this territory.

The rule in question does not appear to be vicious by reason of increasing the rates paid by shippers or by the public; on the contrary, wherever any change is made, the rule results in lowering rates.

On intrastate business metal barrels must be used for the transportation of these articles in Georgia, Florida, Tennessee, and Kentucky, and within a measurably short time metal containers may be required on all interstate shipments. That this requirement has not yet been made is due to the fact that the Commission understands that the shippers have large stocks of wooden barrels on hand, and it is unwilling to put them to extraordinary expense, even though it is convinced that the safety of the public demands that ultimately these articles shall be transported only in metal containers.

The complaint will be dismissed.

24 I. C. C.

No. 3214.

HARDIE MANUFACTURING COMPANY

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

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*Submitted November 8, 1910. Decided June 6, 1912.*

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Rate of 85 cents per 100 pounds, minimum 40,000 pounds, charged for the transportation of a carload of lime-sulphur solution from Pullman Junction, Ill., to Portland, Oreg., found to have been unreasonable to the extent that it exceeded a rate of 65 cents per 100 pounds, minimum 30,000 pounds.

*A. J. Parrington* for complainant.

*A. C. Spencer* for Oregon Railroad & Navigation Company, Oregon Short Line Railroad Company, Union Pacific Railroad Company, and Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in the manufacture and sale of spraying machines and in the sale of spraying compound, with its principal place of business at Portland, Oreg., filed its petition April 4, 1910, alleging that it was charged an unreasonable rate for the transportation of a carload of lime-sulphur solution from Pullman Junction, Ill., to Portland, Oreg., and asking reparation.

January 10, 1910, complainant shipped from Pullman Junction to Portland a carload of lime-sulphur solution, an article used for spraying and dipping purposes, for which transportation charges were collected at a rate of 85 cents per 100 pounds, based on a minimum weight of 40,000 pounds, amounting to \$340. The shipment was invoiced as "lime-sulphur solution," but upon inspection at destination was rated by the delivering carrier as "insect poison, inv. val. not exceeding 6 ct. lb."

At the time the shipment moved there was in force from Pullman Junction, Ill., to Portland, Oreg., a commodity rate on "insect poison n. o. s.", in carloads, of 85 cents per 100 pounds, minimum weight 40,000 pounds. There was no commodity rate specifically applicable to lime-sulphur solution at the time. There was a commodity rate of 65 cents per 100 pounds on "liquid sheep dip" in carloads, minimum



weight 30,000 pounds. The western classification then in force rated "lime and sulphur solution (for dipping and spraying purposes), invoice value not exceeding 6 cents per pound, and so receipted for, min. c. l. wt. 36,000 lbs.", as class C. The same classification rated "sheep dip: invoice value not exceeding 6 cents per pound, and so receipted for, min. c. l. wt. 36,000 lbs.", as class C. The class-C rate was \$1 per 100 pounds. The evidence shows that the commodity in question is extensively used as an orchard spray, especially as a destroyer of the insect known as San José scale. Originally it was chiefly used as a destroyer of insects that infected sheep, but it was later found to be particularly effective as a tree spray.

Complainant contends that inasmuch as lime-sulphur solution may be used as a sheep dip or as an orchard spray, it should have been accorded the same rate as liquid sheep dip, and should not have been charged the higher rate applicable to "insect poison, n. o. s." Having been recognized and approved as a sheep dip as well as an orchard spray, if the shipment had been billed as "liquid sheep dip" instead of "lime-sulphur solution" the inspector could have changed the billing only upon knowledge of the use to which the commodity was to be put. The Commission has consistently condemned the maintenance of different rates upon the same commodity dependent upon the use thereof, and in this case it is held that the same rate should apply on "lime-sulphur solution, inv. val. not exceeding 6 cents per pound," as on "liquid sheep dip, inv. val. not exceeding 6 cents per pound," and on the same minimum basis of 30,000 pounds. The invoice value of the shipment in question was considerably less than 6 cents per pound.

Under the circumstances we are of opinion and find that the rate charged on the shipment was unreasonable to the extent that it exceeded 65 cents per 100 pounds, on a minimum basis of 30,000 pounds. We further find that complainant made the shipment in accordance with the above-stated facts and paid charges thereon at the rate found herein to have been unreasonable, and has been damaged to the extent of the difference between the amount paid and the amount which would have been paid if a rate of 65 cents per 100 pounds, minimum 30,000 pounds, had been applied.

It is stated in the petition that the actual weight of the shipment was 37,800 pounds, but this is denied by several of the defendants, and there is no record proof of such actual weight. The amount of reparation to which complainant is entitled can not, therefore, be determined at this time. The defendant Chicago & Western Indiana Railroad Company in its answer denies that it had anything to do with the transportation of the shipment in question or that it participated therein in any manner. Before an order for reparation can be made complainant will be required to submit evidence, upon proper

notice to defendants, to show the actual weight of the shipment and also whether or not the Chicago & Western Indiana Railroad Company participated in its transportation. The case will be held open for such order as may be necessary upon the submission of such evidence.

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No. 4066.

MEMPHIS FREIGHT BUREAU

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY.

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*Submitted November 15, 1911. Decided June 3, 1912.*

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Complaint dismissed on the ground that it is barred by section 16 of the act.

*James S. Davant* for complainant.

*C. C. P. Rausch* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a voluntary association, by petition, filed May 1, 1911, on behalf of the Weis & Lesh Manufacturing Company, one of its members, attacks the reasonableness of rates charged for the transportation of certain carload shipments of rough spoke bolts which moved during the period, November 13, 1907, to August 10, 1908, from stations on defendant's line in the state of Arkansas to Memphis, Tenn., and seeks reparation. The claims were first presented to the Commission January 14, 1911.

By stipulation, filed August 31, 1911, the parties agreed to the allegations of the petition and the material facts, except that defendant did not admit that the rates charged were unreasonable. By this stipulation there were brought in certain shipments of logs to Memphis made by the Darnell-Taenzer Lumber Company, during the period September 4, 1907, to February 1, 1908. At the hearing there were also introduced claims of the McLean Hardwood Lumber Company, covering shipments of logs made to Memphis during the period December 4, 1907, to February 27, 1908.

It was shown at the hearing that subsequently to the filing of the original petition, defendant, on the authority of its tariff effective 24 I. C. C.



May 21, 1908, had refunded to the Weis & Lesh Manufacturing Company overcharges on shipments forwarded after that date, leaving in issue as to that complainant only those shipments forwarded to Memphis during the period, November 13, 1907, to May 18, 1908, inclusive.

Prior to August 15, 1907, St. Louis, Iron Mountain & Southern Railway tariff, I. C. C. No. 9994, named distance rates on rough spoke bolts, logs, and similar raw material between points in Arkansas, when for manufacture and reshipment to interstate points via the parent and affiliated lines of defendant, under which, from all points of origin here in controversy, the rate to Memphis Bridge junction, Ark., was fixed at 2 cents per 100 pounds, and provision was made for an arbitrary of 2 cents per 100 pounds from Memphis Bridge junction to Memphis, Tenn., making a through rate of 4 cents per 100 pounds. By the terms of this tariff the rates named therein were not to be used in waybilling or collecting charges, but as a basis down to which charges would be refunded upon evidence of outbound shipments of manufactured products in the proportion of at least  $33\frac{1}{3}$  per cent of the weight of the inbound logs. On August 15, 1907, in making changes due in part to orders of the Arkansas state commission, defendant through inadvertence canceled the application of these rates between points in Arkansas on interstate as well as state traffic and referred for rates to its tariff, I. C. C. No. A-116, which was applicable only to intrastate business.

By tariff, I. C. C. No. A-484, effective May 21, 1908, a specific rate of 4 cents per 100 pounds to Memphis was established, applicable from all of the stations involved on rough bolts, logs, and other similar raw materials for manufacture and reshipment. In the interval these shipments were made and local rates as named in tariff, I. C. C. No. 9969, were charged and collected at Memphis. These local rates are attacked as unreasonable for the transportation service performed, and refund is claimed on basis of the 4-cent rate previously in force and afterwards reestablished.

It is not disputed that sufficient reshipments of manufactured products were made from Memphis to bring the inbound movements within the previously existing and subsequently established tariff requirements in that respect. In fact, defendant is apparently willing to pay the claims should authority be granted by this Commission so to do.

We have, therefore, the situation of shipments of inbound raw material, all of which were delivered and transportation charges thereon paid at the manufacturing and reshipping point during May, 1908, and previously thereto, or more than two years prior to presentation of the matter to this Commission. The published local



rates to Memphis were paid on all the shipments, and the tariff naming such rates in no way referred to the manufacturing and re-shipping tariffs, contained no requirement for identification of shipments and nothing to indicate that shipments thereunder were entitled to transit privileges, and held out no offer of any lower or different rate conditioned upon further handling or treatment of the raw materials; that is to say, the tariffs did not so connect the inbound and outbound movements as to constitute continuous carriage from points of origin of the materials to points of destination of the products. Complainant contends that the delivery of an inbound shipment at a transit point is but one step of a progressive movement, and that the status of such a shipment remains unchanged as to the period of limitation, even though at the time of such delivery there was no lawful tariff permitting any further handling of the shipment and consequent refund, and no authority in the tariff under which the shipment moved to in any way alter or modify the rate named because of fabrication or reshipment.

We are of the opinion that there are present here no circumstances by which the transportation into and out of the transit point may be characterized as continuous and that the movements upon which this case is predicated ended, the transactions were finally and effectually closed, and the cause of action, if any, as the term is used in the act, accrued when deliveries were made at Memphis and the published charges paid, and that consequently the complaint is barred by section 16 of the act. An order of dismissal will therefore be entered.

24 I. C. C.

No. 4246.

CENTRAL CALIFORNIA TRACTION COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY  
ET AL.

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*Submitted February 8, 1912. Decided June 3, 1912.*

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Charges assessed on shipments of rough iron castings from Beaver Dam, Wis., to Stockton, Cal., found to have been unjust and unreasonable in so far as they exceeded the fourth-class rate, which at the time of shipment was \$1.90 per 100 pounds. Reparation awarded upon that basis and the rate for the future limited to the fourth-class rate contemporaneously maintained.

*J. O. Bracken* for complainant.

*H. A. Scandrett* for Union Pacific Railroad Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in operating and building electric lines and has its principal office in San Francisco, Cal. In its petition, filed July 18, 1911, it alleges that it was charged unreasonable rates for the transportation of certain rough iron castings in sacks from Beaver Dam, Wis., to Stockton, Cal. Reparation is asked.

In November, 1909, there were shipped via defendants' lines from Beaver Dam to complainant at Stockton, Cal., 22 sacks of iron castings, weighing 4,640 pounds, and in December, 1909, from and to the same points, another shipment consisting of 28 sacks of iron castings, weighing 6,460 pounds. Transportation charges in the sums of \$111.36 and \$155, respectively, were assessed on these shipments, based on a rate of \$2.40 per 100 pounds.

At the time the shipments moved the western classification provided for fourth-class rating on castings in less than carloads in bags, boxes, or casks. The fourth-class rate from Beaver Dam to Stockton was \$1.90. Contemporaneously, however, the defendants' tariffs named a commodity rate of \$1.60 on castings, n. o. s., in boxes, casks, or crates. A rule of the tariff provided that—

when commodity rates provide for articles "boxed," and do not provide for same in \* \* \* bags or bundles, they will take when shipped in \* \* \* bags or bundles, 50 per cent higher rate than in boxes \* \* \*.



Under the application of this rule the commodity rate applicable on the shipments involved became \$2.40 per 100 pounds, as charged.

The complainant contends that the class rate should have been applied to its shipments. This contention, however, is untenable, it being an established rule that where both class and commodity rates on any commodity are in effect from and to the same points, the commodity rate, being specific, takes the particular article out of the classification and becomes the only lawful rate.

Upon the record we are of the opinion, and so find, that the rate charged was unreasonable in so far as it exceeded the fourth-class rate in effect at the time of \$1.90 per 100 pounds, and we shall prescribe the rate for the future which shall not exceed the fourth-class rate contemporaneously in effect.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$55.50, with interest from February 16, 1910. An order will be entered in accordance with the findings herein announced.

24 I. C. C.

No. 4376.

SOUTHWESTERN MILLERS' LEAGUE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted December 15, 1911. Decided June 5, 1912.*

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1. Upon a reexamination of the question the application, on a mixed carload shipment of grain or grain products, of the proportional carload rate, or the balance of the through carload rate, to the transit portion of the shipment, and of the flat carload rate to the nontransit portion not found objectionable when restricted by the tariff provisions suggested in the report, and when the traffic is otherwise safeguarded by the requirements of the rulings of the Commission respecting transit practices.
2. Such a rate adjustment is in the public interest in that it enables small mills at small points to exist and to reach the markets of consumption on a basis of relative equality with mills at larger points.

*Martin E. Casto* for complainant.

*T. J. Norton, J. R. Koontz, and B. F. E. Marsh* for Atchison, Topeka & Santa Fe Railway Company.

*Fred Smith* for Chicago, Rock Island & Pacific Railway Company.

*K. M. Wharry, Martin L. Clardy, and H. G. Herbel* for Missouri Pacific Railway Company.

*F. H. Wood, E. K. Voorhees, and F. C. Dumbeck* for St. Louis & San Francisco Railroad Company.

*F. C. Dillard, L. T. Wilcox, and H. G. Kaill* for Union Pacific Railroad Company.

*J. W. Allen and Joseph M. Bryson* for Missouri, Kansas & Texas Railroad Company.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*C. C. Wright* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The capacity of the flour mills of the country is said to be sufficient to grind in 144 days all the wheat produced in the United States; and the keen competition resulting from this state of affairs was the occasion of this complaint, brought by a voluntary association representing flour millers in the states of Kansas, Nebraska, and Oklahoma. The record shows that in Kansas alone there are 289 mills,



their combined capacity being 60,000 barrels a day; in Nebraska there are 235 mills with an aggregate daily capacity of 22,000 barrels; and in Oklahoma we are told that there are 104 mills with a capacity of 18,000 barrels a day. The capital so invested in these three states amounts to \$39,200,000, and the aggregate capacity of the mills is 100,000 barrels a day. Their average output per mill, however, is only 160 barrels a day, which indicates that many of them are of comparatively small capacity. Located in the interior, these smaller mills must meet the competition of the larger mills at the primary grain markets and important milling points such as Kansas City and St. Louis; and it is alleged that the conditions under which their products reach consumers subject them to an undue discrimination and give a corresponding advantage to the large mills elsewhere.

The rule complained of is of recent origin, having first been published by the defendants in March, 1911. The language varies somewhat in the different tariffs of the individual defendants, but in substance the rules are alike. The Santa Fe tariff publishes the rule in this form:

When car contains mixed lots of transit and nontransit tonnage, minimum carload weight, or actual weight, if in excess thereof, \* \* \* must be applied on the transit portion. The nontransit portion will be treated as a separate shipment, and flat rate, carload or less, as the weight may require, from transit point, will be applied thereon, in addition to amount assessed on the transit portion.

Under the rule formerly in effect, as interpreted by the defendants in their actual practice, the balance of the through rate, or the out-bound proportional rate, was applied on the actual weight of the transit commodity in the car, and the flat carload rate from the milling point was assessed on the actual weight of the nontransit commodity in the car. When the actual weight of the entire shipment was less than the minimum carload weight, the billed weight of the transit portion of the shipment was increased so that the sum of the billed weights of the transit and nontransit articles would equal the carload minimum weight. This rule and practice the complainants wish restored.

The present rule is quite different, and it is alleged that besides being discriminatory it is also unreasonable. It requires the transit portion of the shipment to be charged for at the balance of the through rate, or at the reshipping rate, based on the carload minimum weight. Any nontransit grain or grain products in the car must be treated as a separate shipment from the milling point, taking the flat local less-than-carload rate on the basis of its actual weight.

The complainant asserts that this rule puts the small miller at interior points at a substantial disadvantage. Much of the grain

used by him is of local origin, or is nontransit because it has come in over a road other than the one that has the outbound haul. His supply of transit grain is therefore limited. On the other hand, the millers at Kansas City, at St. Louis, and at other large milling points and primary markets, make no objection to the rule because it has no practical application to their operations. Little, if any, grain at those markets is of local origin. Substantially all of it comes in on transit rates. They therefore usually have on hand a supply of transit grain or products of grain milled in transit which may be used to advantage in outbound mixed carload lots. By avoiding the use of nontransit grain and grain products they escape the payment of local rates, and are able to ship the entire contents of the car at the balance of a through rate.

The actual difference in the results accruing under the two rules to a small miller in the interior is shown by an illustrative mixed carload shipment of flour and corn chops from a milling point in Oklahoma. It consisted of 17,770 pounds of wheat products manufactured from transit wheat, and 7,000 pounds of corn chops made from local corn, or a total of 24,770 pounds. The wheat had come in to the milling point on a carload rate of  $8\frac{1}{2}$  cents, the charges amounting to \$15.10; the products were billed out at  $4\frac{1}{2}$  cents, or the balance of a through carload rate of 13 cents, making an outbound charge, on a minimum weight of 24,000 pounds, of \$10.80. The charges on the 7,000 pounds of corn chops at the local less than carload rate of 34.6 cents per 100 pounds aggregated \$24.22. Under the application of the present rule the total charges amounted therefore to \$50.12. According to the practice of the carriers under the rule formerly in effect the wheat would have moved into the transit point at the  $8\frac{1}{2}$ -cent rate and the charges would have been the same as under the new rule, namely, \$15.10. The wheat products moving outbound at the same  $4\frac{1}{2}$ -cent rate would have been assessed on the basis of their actual weight of 17,770 pounds instead of being assessed on the basis of the carload minimum weight of 24,000 pounds. Those charges therefore would have amounted to \$8 instead of \$10.80. The 7,000 pounds of corn chops made from nontransit corn, instead of being assessed at the less-than-carload rate of 34.6 cents, or at the aggregate sum of \$24.22, would have been charged for at the sum of \$9.10, under a carload rate from the milling point of 13 cents per 100 pounds. The total charges under the old rule therefore would have amounted to \$32.20, or \$17.92 less than the charges that were actually assessed under the present rule. It developed later that better results could have been obtained by the shipper if the particular shipment had been billed locally both inbound and outbound; on such billing the total charge would have aggregated \$47.30, or \$2.82 less than the



aggregate charges actually assessed. But the charges under the local billing would still have been \$15.10 more than the aggregate charges if billed to meet the requirements of the rule formerly in effect. As will be observed, the local rate per 100 pounds on less-than-carload shipments of grain and grain products in this territory is sometimes two and three times the amount of the carload rate.

Practically no defense was interposed on behalf of the carriers. The former rule was withdrawn and the present rule established by them in order, as is said, to conform their practices more closely to the views of the Commission respecting transit privileges. Without attempting to meet the allegation that the present rule results in a discrimination against the smaller millers at interior points, or to justify the substantial increase in their freight bills under the new rule as compared with the charges under the old rule, the defendants indicate their willingness to comply with any suggestion by the Commission looking to an amelioration of the disadvantages of the complainants in their competition with the larger mills.

These disadvantages do not grow out of any artificial situation created by the rate adjustment of the carriers. On the contrary the rule complained of is applicable at all points on the defendant lines, and with an adequate supply of transit grain and grain products the millers at the smaller places would be at no disadvantage as compared with the millers at primary markets. A miller at Wichita, for example, purchased wheat from a farmer in the neighborhood, but instead of having it hauled by wagon to his mill, where it would have been nontransit grain under the rule, had it hauled to a country station and there shipped into Wichita by rail. It thus became transit wheat and he was able to use it in a mixed carload and have the benefit of the outbound carload rates on the whole shipment. Another instance is shown of record where it was of advantage to a country miller to make a local shipment to a nearby point in order that the grain might return to him on new billing as transit grain. The shippers at the primary markets and larger milling points are not required to resort to such expedients because, being in the channels of great grain movements, they ordinarily find on hand a sufficient supply of transit grain and grain products to make up their mixed-carload shipments. They thus escape the payment of local less-than-carload rates on nontransit stuff. These advantages, however, result from the geographical location of these places or from other causes that have made them primary markets and large milling centers.

The rule formerly in effect on the defendant lines is said by the complainants not to conflict with the law or with our rulings, and attention is called to the fact that the official classification permits the consolidation in carloads of different commodities under a rule that

applies to the entire shipment the highest carload rate and minimum weight on any article in the mixture. We are aware of the provision in that classification and also of the fact that other classifications permit mixed carload shipments at carload rates. The former rule of these defendants, which the complainants wish restored, was constructed, however, on an entirely different principle. It did not purport to establish a carload rate on a mixed carload shipment from a transit point, but to apply from that point the balance of a carload rate from a point beyond to a less-than-carload shipment of a transit commodity from the transit point, and permitted the shipper to make good the shortage in the minimum weight by putting into the car at the transit point the required weight of some nontransit commodity. The result of the operation of the rule was not only to give to a less-than-carload quantity of the transit commodity the benefit of the balance of a through carload rate but to give a carload rate to a nontransit commodity, although moving in less-than-carload quantity from the transit point. This is clearly in conflict with some things that we have said in connection with transit practices. The present rule is free from that objection.

The unfavorable results of the new rule to the millers on whose behalf this complaint was brought, and the unfavorable results of similar rules to other millers at small points, are so obvious as to suggest that some way should be found for giving them relief. It ought to be made possible for flour and feed mills to exist in the smaller communities and to reach the markets of consumption on an approximate or relative basis of equality with the mills at the larger points. We have been led, therefore, to reexamine the question and have arrived at the conclusion that there is no objection to the application of carload rates on mixed carload shipments of transit and nontransit grain and grain products. We think the public interest will be advanced and that no sound transportation principle will be violated by permitting the use of the proportional carload rate or the balance of the through rate on the transit portion of such a shipment and the flat carload rate from the transit point on the nontransit portion. Such a rate adjustment, however, ought to be accompanied by clearly defined and definitely understood restrictions duly published in the tariffs. The total charges ought to be based on the highest carload minimum applicable on any commodity in the car; it should also be provided that the carload rate will not apply to that portion of the shipment, whether transit or nontransit, the actual or billed weight of which is less than 10,000 pounds; and the traffic, under clear and precise tariff provisions, should be surrounded with all the safeguards required by the transit rulings of the Commission. Such a tariff adjustment in connection with the traffic in grain and grain products will put the small mills in a better position to exist and



make it possible for them to compete with mills at the larger points where the disadvantages herein described do not exist; it will also fairly meet our requirements without violating any provision of the law.

No order seems to be required. It will be well to add, however, that no reparation on past shipments will be allowed in consequence of any readjustment of rates on grain and grain products as a result of this announcement.

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No. 3785.

BANCROFT-WHITNEY COMPANY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAIL-  
WAY COMPANY ET AL.

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*Submitted February 8, 1912. Decided June 3, 1912.*

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Rate for the transportation of electrotype plates from Cincinnati, Ohio, to San Francisco, Cal., found unreasonable. Reparation awarded.

*W. W. Brackett* for complainant.

*E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

*C. W. Durbrow* for Morgan's Louisiana & Texas Railroad & Steamship Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the publication of books at San Francisco, Cal., in its petition, filed January 25, 1911, alleges that unreasonable rates were charged it by defendants for the transportation of electrotype and stereotype plates in carload lots moving to San Francisco from Cincinnati, Ohio, on May 19, 1909, and from St. Louis, Mo., on September 9, 1910. Reparation is asked.

On May 19, 1909, complainant caused to be shipped to itself at San Francisco from Cincinnati 403 boxes of electrotype plates, weighing 24,600 pounds. The shipment moved over the lines of Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; New Orleans & Northeastern Railroad

Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Galveston, Harrisburg & San Antonio Railway Company, and Southern Pacific Company. Charges were assessed on basis of the first-class rate of \$3 per 100 pounds and the complainant paid the sum of \$738.

On September 9, 1910, complainant caused to be shipped to itself at San Francisco from St. Louis, 283 boxes of stereotype plates, weighing 19,580 pounds. The shipment moved over the lines of the Wabash Railroad Company and Atchison, Topeka & Santa Fe Railway Company. Charges were assessed on basis of the third-class rate of \$2.20 per 100 pounds and complainant paid the sum of \$430.76.

There was in effect at the time of the shipments a commodity rate on type, boxed, when shipped in carloads, from the points of origin named to San Francisco of \$1.10, carload minimum, 30,000 pounds. There is no carload rating on the plates in question, the rule of the classification being that where no carload rates are named the rates will apply on any quantity. Complainant's contention is that it is unreasonable to charge higher rates on carload shipments of electrotype and stereotype plates boxed than is charged on similar shipments of type. It is asserted that all three articles are put to the same use; that there is no greater risk of loss or damage in the case of one than of the others; and that the purchase price per pound of the plates is less than that of the type. The evidence shows that the stereotype plates cost 20 cents a page, which is equivalent to 15 cents a pound; that electrotpe plates cost about 37½ cents a pound, and type 50 cents a pound.

At the hearing it was stated by counsel for complainant that the movement of stereotype and electrotpe plates from eastern territory to Pacific terminals is small. There does not appear to have been a demand upon the part of any shipper for commodity rates on this traffic, but a shipper is entitled to have his commodities moved at reasonable rates without reference to the number of his shipments. On this record we can find no basis for the establishment of commodity rates from and to the points involved. The record does establish, however, that the classification rating applied to the shipment of electrotpe plates was unreasonable. It was a carload movement on which the first-class rate was charged. At the same time western classification provided second-class rating on type and third-class rating on stereotype plates, any quantity. Examination of tariffs on file discloses that the rate on stereotype and electrotpe metal between the points in question is \$1 per 100 pounds.

Considering the value of electrotpe plates, the fact that they are shipped in boxes the same as type, that liability for loss and damage is negligible in shipments of both type and plate, we are of the



opinion that the charges collected on the shipment of electrotype plates referred to above were unreasonable to the extent that they exceeded the second-class rate. We are unable upon the record to find that the charges collected on the shipment of stereotype plates were unreasonable.

We further find that the shipment of electrotype plates was made as shown in the above statement of facts; that complainant paid charges thereon at the rate of \$3 per 100 pounds; that it has been damaged to the extent that the charges exceeded the second-class rate of \$2.60 per 100 pounds; and that it is entitled to an award of reparation in the sum of \$98.40, with interest from June 4, 1909. The defendants will be required to establish and maintain for a period of not less than two years a rate on electrotype plates from Cincinnati, Ohio, to San Francisco, Cal., which shall not exceed their contemporaneous second-class rate from and to said points. An order in conformity with this finding will follow.

24 I. C. C.

No. 4235.

J. H. BAHRENBURG, BRO. & COMPANY ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

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*Submitted February 8, 1912. Decided March 4, 1912.*

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1. Defendants' present rates for the transportation of watermelons and cantaloupes from various points of production in the southeast to consuming markets north of the Potomac River and east of the Buffalo-Pittsburgh line not found to be unreasonable.
2. The exact relation which ought to exist between the rates on watermelons and the rates on cantaloupes not determined upon this record.
3. Allegation that defendants' rates on watermelons and cantaloupes from the southeast to different points in trunk line territory are not properly adjusted with reference to one another and with reference to other territory not established; but right is reserved upon a more specific complaint and a fuller record to further examine this question.
4. Complainants' contention that defendants should be ordered to resume delivery of melons in New York City not sustained, as the proof amply justified the delivering carrier in changing its delivery from New York City to Jersey City.

*Richard J. Donovan* and *Herbert D. Cohen* for complainants.

*George Stuart Patterson* for Pennsylvania Railroad system; Baltimore & Ohio Railroad Company; and Buffalo, Rochester & Pittsburgh Railway Company.

*R. Walton Moore*, *Charles J. Rixey, jr.*, and *Frank W. Gwathmey* for Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Seaboard Air Line Railway, and others.

*Jackson E. Reynolds* for Central Railroad Company of New Jersey.

*John L. Seager* and *E. S. Giles* for Delaware, Lackawanna & Western Railroad Company.

#### REPORT OF THE COMMISSION.

*PROUTY, Chairman:*

The rates involved in this proceeding are those upon watermelons and cantaloupes from various points of production in the states of Florida, Georgia, Alabama, North and South Carolina, and perhaps some portions of Virginia to consuming markets north of the Potomac River and east of the Buffalo-Pittsburgh line. While both



watermelons and cantaloupes are involved, and while it was claimed that the relation in rates to various destinations was wrong, the main attack of the complainants was directed to rates on watermelons from points of production to New York City. Since rates to this market are in some sense basic, and since the testimony on both sides has been mainly addressed to them, they may be first considered.

Watermelons are produced throughout the south generally. The testimony in this record indicates that soil of a character adapted to their growth is found to a great extent in all the section under consideration, and that the cultivation involves no high degree of skill and no great outlay in the preparation of the soil or the planting and harvesting of the crop. The only peculiar feature developed by the testimony was that watermelons are not raised a second time in the same place for the reason, apparently, that some element in the soil essential to their successful production is exhausted by the first crop.

Elaborate statements were introduced to show the present cost of raising watermelons per acre and per car, the price received, and the profit or want of profit to the grower. It is unnecessary to discuss these figures in detail. They show that the cost of producing this crop has increased in recent years, and it is our impression that the present profit is less than it formerly was, and that in the majority of cases the margin to the grower, especially in the more northern sections, is a narrow one.

It may be noted, however, that while it is urged by the complainants that the business of producing watermelons can no longer be conducted at a profit, that business has rapidly developed in recent years under present rates. The Atlantic Coast Line, which operates from all these states and handles more of this traffic than any other railroad, carried more than 66½ per cent more carloads of watermelons in 1911 than in 1906. Deliveries of watermelons at the New York market in 1911 were 2,100 cars, as compared with 1,200 in 1906. It is doubtless to this increase in production that the shrinkage in profits to the producer is largely due.

It appeared that the price of watermelons in the New York market ranges from \$400 per car down to as low as \$175, and at times even less, the price depending upon the season and the quantity of melons offered for sale. The first shipments from Florida command a high price and yield a handsome profit to the grower over and above the cost and the freight, but as the season advances, as melons come into market from various other sources of supply, the price falls, and it frequently happens that the price obtainable for the melons does not much, if any, exceed the freight charges.

Watermelons are packed for transportation into a ventilated car, without boxing or crating. About one thousand watermelons of the

average size can be placed in a car. The minimum provided by the tariffs is 24,000 pounds, but the actual loading averages 27,000 pounds.

Watermelons are never shipped under refrigeration. While a perishable article, they do not require the greatest expedition. In actual practice they are given a somewhat quicker movement than oranges, about the same as vegetables, from Florida.

Within the last three or four years this Commission has established or approved rates upon various fruits and vegetables from Florida, Georgia, and South Carolina points to New York City, and it seems proper to compare the present rates on watermelons with the rates approved in those cases.

In *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 476, carload rates on oranges from Florida base points to eastern cities were established, and later, in the same case, 17 I. C. C., 552, carload rates on vegetables, both under ventilation and under refrigeration, between the same points were fixed.

Below is a table giving the rate, the rate per ton-mile, and the earnings per car upon watermelons, cantaloupes, oranges, cabbage, and vegetables under refrigeration from Jacksonville and Trilby, Fla., to Jersey City. Trilby is upon the Atlantic Coast Line Railroad some 180 miles southwest of Jacksonville, and is selected as a typical producing point. The complainants insisted that rates upon watermelons should be no higher than upon lumber, and for this reason that commodity has been included in the table.

In determining the car earnings it has been assumed that the minimum is actually carried in all cases except watermelons and lumber. The carload on watermelons has been taken to be 27,000 pounds and of lumber 50,000 pounds, these being about the actual loading.

*Rates to Jersey City from Jacksonville (from beyond, distance, 981 miles) and Trilby (distance, 1,162 miles).*

	Rate.		Rate per ton-mile.	Earnings per car.
	Per 100 pounds.	Per crate.		
Watermelons, carload loading, 27,000 pounds:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	
Jacksonville.....	42		.856	\$113.40
Trilby.....	49.9		.859	134.73
Cantaloupes, carload minimum, 24,000 pounds:				
Jacksonville.....	42		.856	100.80
Trilby.....	64		1.102	153.60
Oranges, carload minimum, 300 packages:				
Jacksonville.....		46	1.172	138.00
Trilby.....		61	1.312	183.00
Cabbage, carload minimum, 24,000 pounds:				
Jacksonville.....	60		1.223	144.00
Trilby.....	78.5		1.351	188.40
Vegetables, under refrigeration, minimum, 350 crates:				
Jacksonville.....		39	1.590	136.50
Trilby.....		51	1.756	178.50
Lumber, carload loading, 50,000 pounds:				
Jacksonville.....	27		.550	135.00
Trilby.....	33.5		.577	167.50



It will be seen that the rate upon watermelons is lower than that upon any other fruit or vegetable except cantaloupes included in the table, and probably it ought to be. Watermelons load somewhat heavier than oranges, and, taking the season through, a carload of oranges is worth from two to three times a carload of watermelons upon the New York market. Formerly oranges were generally transported in ventilated cars like those used for the handling of watermelons, but of late shippers are demanding refrigerator cars, even though the movement is not under refrigeration, so that the car used in the movement of oranges is somewhat more expensive and somewhat heavier than that employed in the case of watermelons. While, however, these considerations would call for a lower rate upon the watermelon than upon the orange, we can not feel that the present difference in favor of the watermelon could properly be increased. The melon rate per 100 pounds is now more than one-fourth lower than that upon oranges, while the cost of the service does not very much differ. Considering the extent and uniformity of the orange movement, that would probably be the more desirable business at the same tariff.

It is probable that cabbages are more nearly akin to watermelons in incidents of transportation than any other fruit or vegetable. While cabbages are shipped in packages, as a rule, they are also frequently sent in bulk. While they sometimes go under refrigeration, they can be and are sent under ventilation. The loading of the cabbage is about the same as that of the watermelon, and its value is somewhat greater, but, on the whole, it would appear that the freight rate might well be approximately the same. It will be noted that the rate on watermelons is decidedly lower than that upon cabbages.

Cantaloupes are shipped in crates and always under refrigeration. The loading is 24,000 pounds to the car. The value of cantaloupes and vegetables is substantially the same. Were it not for the fact that the cantaloupe loads heavier than the vegetable under refrigeration the rates upon the two commodities might well be about the same. In view of the heavier loading of the cantaloupe the transportation charge upon that commodity should be less, and it will be seen from an examination of the above table that under the present rates it is materially less.

The comparison from Jacksonville is not, however, a fair one, since, for some unexplained reason, the cantaloupe rate from that point is much lower in comparison with all other rates than it is from other points.

On the whole it clearly appears that the present rates on watermelons and cantaloupes from Florida points to New York are as low as corresponding rates established by this Commission upon other fruits and vegetables between the same points.

In *Waxelbaum v. A. C. L. R. R. Co.*, 12 I. C. C., 178, the Commission prescribed rates for the movement of peaches from Georgia points to New York. Below is a table showing the same transportation facts as to watermelons, cantaloupes, peaches, and lumber from Macon, Ga., a typical point of production, to New York City, as are given in the first table from Florida points:

*Rates to New York, N. Y., from Macon, Ga.; distance, 928 miles.*

	Rate per 100 pounds.	Rate per ton-mile.	Earnings per car.
	<i>Cents.</i>	<i>Cents.</i>	
Watermelons, carload loading, 27,000 pounds .....	38	.819	\$102.60
Cantaloupes, carload minimum 24,000 pounds.....	48½	1.051	117.00
Peaches, carload minimum 22,500 pounds.....	76	1.638	171.00
Lumber, carload loading, 50,000 pounds.....	31	.668	155.00

It will be seen from an examination of the above table that both the rate and the carload earnings upon peaches are much higher than upon watermelons and distinctly higher than upon cantaloupes.

Watermelons can not fairly be compared with peaches. The peach is more valuable, more perishable, loads lighter, must always be handled under refrigeration, and requires a much more expeditious service. The transportation charge should be much higher upon that commodity than upon the watermelon.

Cantaloupes are fairly comparable with peaches. The two articles are about equally perishable, of substantially the same value, both move uniformly under refrigeration, and require the same expedited service. The cantaloupe loads somewhat heavier than the peach, and for this reason might properly take a less rate. We do not think, however, that the difference in favor of the cantaloupe could properly be greater than that now existing. If the rates upon either watermelons or cantaloupes from Georgia points are to be tested by that fixed by this Commission for peaches, the present rates can not be pronounced unreasonable.

In *Asparagus Growers' Asso. v. A. C. L. R. R. Co.*, 17 I. C. C., 423, rates were established upon asparagus from Charleston to New York, and in *Truck Growers' Asso. v. A. C. L. R. R. Co.*, 20 I. C. C., 190, rates upon cabbage and vegetables, n. o. s., were approved. Below is given a table embracing the same transportation facts as are given in the two preceding tables with respect to the shipment of watermelons, cantaloupes, asparagus, cabbage, and vegetables from Charleston to New York.



*Rates to New York, N. Y., from Charleston, S. C.; distance, 739 miles.*

	Rate.		Rate per ton-mile.	Earnings per car.
		<i>Cents.</i>	<i>Cents.</i>	
Watermelons, carload loading, 27,000 pounds .....	Per 100 pounds....	34	9.20	\$91.80
Cantaloupes, under refrigeration, carload minimum 24,000 pounds.	.....do.....	43½	1.184	105.00
Asparagus, minimum 300 crates .....	Per 24 bunches, of 65 pounds.	60	2.498	180.00
Cabbage, minimum 24,000 pounds.....	Per 100 pounds....	46	1.247	110.40
Vegetables, under refrigeration, minimum 400 packages.	Per 50-pound package.	30	1.624	120.00

This table shows that the rates fixed upon asparagus are much higher in every respect than those upon both watermelons and cantaloupes. They certainly should be much higher than upon watermelons, and probably somewhat higher than upon cantaloupes, in view of the greater value of the commodity and the less extent of the movement. We see no reason why rates upon watermelons should be greatly less than upon cabbage, and, certainly, the rate upon cantaloupes ought not to be lower.

If these rates recently approved by us from the Charleston district are to be used as the measure of a reasonable rate upon watermelons and cantaloupes from the Carolinas to New York, the present rates on those commodities can not be found unreasonable.

Watermelons move from these same southern points of production, especially in Florida, Georgia, and Alabama, to and through the Ohio River crossings. The complainants show that these rates are somewhat lower for corresponding distances than the rates under attack and urges that if the carriers can voluntarily make these rates to the Ohio River for consumption in central freight association territory they can afford to reduce their rates from the same points to eastern territory.

Watermelons are grown in territory directly south and southwest of the Ohio River, and these melons compete with those from the southeast in the markets of the central west. Distances from the southern fields are usually shorter, conditions of operation easier, and the lines of transportation are, as a rule, stronger, than those handling the business from Georgia and Florida. It appeared in the *Florida Fruit & Vegetable case, supra*, that this same competition existed in case of vegetables, and that, as a result, rates from the southeast to the Ohio River had been forced down below what would otherwise be reasonable. We declined to condemn an advance from 25 to 30 cents per crate for this reason.

So, in the present case, while the voluntary establishment of these lower rates to the middle west than to the Atlantic seaboard is a fact tending to show that the rate under attack might well be re-

duced, we do not feel that when explained, as it is, it is sufficient to condemn as unreasonable what is clearly reasonable as estimated by the rates fixed by this Commission in other cases.

The complainants insist that rates upon watermelons ought not to exceed those upon such commodities as lumber, clay, brick, etc., and in this view lumber has been included in the above tables. It will be seen that the rate per ton-mile on lumber is in all cases lower than that upon watermelons, but that the car earnings based upon the actual loading are, in all cases, greater. It is evident that neither the ton-mile nor the car earnings furnish an absolutely correct test, which would be more nearly found in a combination of the two. In the present instance, having reference entirely to the cost of the service, it seems probable that the present rate on watermelons is fully as low as the present rate on lumber. The institution of this comparison must not, however, be taken as an assent to the proposition of the complainants that these watermelon rates can justly be compared with rates upon a commodity like lumber, which moves under entirely different conditions.

Upon a view of the entire situation we are unable to find that the present rates on watermelons from these points of production in the south to New York are unreasonable.

Cantaloupe rates are generally 25 per cent higher than those upon watermelons, but for some reason the rate from Jacksonville upon cantaloupes is the same as that upon watermelons. Laying hold upon this fact, the complainants insist that if the carrier can maintain this relation of rates from Jacksonville it can maintain it generally and should be required to do so.

How this relation in rates happens to exist from Jacksonville is not explained. The defendants were of the opinion that it must have originally found its way into the tariff by inadvertence and been perpetuated rather than to seek to advance the cantaloupe rate, which is not a very satisfactory explanation. Whatever the reason may be, the accidental existence of this rate at a single point ought not to compel an unjust and unreasonable relation of rates at all other points.

It is conceded that cantaloupes are much more perishable and much more valuable than watermelons. They uniformly move under refrigeration, at a less loading, and generally by a more expedited service. Nothing can be more certain than that the charge for their transportation should be materially higher. Without undertaking to determine the exact relation which ought to exist between the rates upon these two commodities, we hold that the present rates upon cantaloupes have not been shown to be unlawful.



The complaint alleges that rates to different points in trunk line territory are not properly adjusted with reference to one another and with reference to other territory.

Upon the trial the complainants introduced certain tables, which showed, as already suggested, that rates to central freight association territory were lower, per ton-mile, than those to Atlantic seaboard territory, and which further showed upon a ton-mile basis that if the rate to one point was reasonable the rate to other points was somewhat too high or too low. No particular locality was called to our attention, nor was this phase of the case much urged either in the proof or upon the argument.

Comment has already been made upon the Ohio River rates. We have compared present rates on watermelons to various interior points in trunk line territory and to points in New England with rates established to these same points by the Commission upon oranges, in the *Florida Fruit & Vegetable case, supra*. We find that the present relation between Baltimore, Philadelphia, and New York is just, and that while there may be inconsistencies in the rates to New England and interior trunk line points, they are not sufficient to require us, at this time, and upon this record, to direct a change. We fail to find that this allegation in the complaint has been established, reserving the right upon a more specific complaint and a fuller record to further examine that question.

At the present time these watermelons when for New York consumption are delivered upon the team tracks of the Pennsylvania Railroad in Jersey City. Certain tracks are set apart for this watermelon traffic during the season and therefore become the watermelon market for the city of New York and for Jersey City.

Previous to 1902 deliveries were made at pier 29 in the city of New York, the car being floated across the Hudson River. Under this arrangement the melons were unloaded from the car by the carrier and placed in bins, the identity of each carload being preserved. Other fruits and vegetables from the south were unloaded upon this same pier and were, to a considerable extent, sold by commission merchants at this point, so that pier 29 became the wholesale market for these fruits and vegetables, including at that time watermelons.

Great difficulty was experienced in persuading the consignees of watermelons to remove them promptly from the bins. The space was limited and, after making an attempt to agree on some plan with the consignees which would provide a sufficient penalty to induce a prompt handling of the melons, the Pennsylvania Railroad finally decided to withdraw deliveries entirely from pier 29 and confine them to its team tracks in Jersey City.

At the time this change was made the New York rate was reduced 1 cent, it being provided by the tariff that delivery would be made in Jersey City, but that upon the payment of an additional 1 cent, which would be the former rate, the car might be ordered to the team tracks of the Pennsylvania Railroad at 37th street, New York, or to the team tracks of that same road at the Eastern District Terminal in Brooklyn.

The complainants now insist that the defendants should be ordered to resume delivery in New York City, or, in default, that the rate should be reduced by an amount which fairly equals the saving to the railroad by the change.

Under the present delivery the melons are taken from the car by the consignee. The railroad is therefore saved the expense of floating the car across the river and removing the melons from the car. The ordinary lighterage allowance within the lighterage limits for the city of New York is 3 cents per 100 pounds, and it seems fairly evident that the saving to the railroad by this change in the place and manner of delivery must have amounted to at least the ordinary cost of lighterage.

When deliveries were made at pier 29 the drayage charge to a particular section of New York City was 1 cent per melon, to the balance of the city  $1\frac{1}{2}$  cents. The present drayage charge from Jersey City is 2 cents to that territory which formerly paid 1 cent and  $2\frac{1}{2}$  cents to the former  $1\frac{1}{2}$  cents territory. There are approximately 1,000 melons in a car, so that the additional cost to the consignee is approximately \$10 per car in drayage.

In addition to this the melons under the former arrangement were brought together with other fruits and vegetables from Florida, and dealers who came there for the purpose of purchasing these other products frequently bought watermelons. Commission merchants who handle watermelons now find it difficult to persuade their customers to visit the tracks in Jersey City for the purpose of inspecting and purchasing melons, and this, it was alleged, is a serious disadvantage to the commission merchant handling this product now as compared with the former arrangement.

The proof shows that the Pennsylvania Railroad was amply justified in changing its delivery from pier 29 to Jersey City. No other bulk freight of any character is handled at pier 29, and the capacity of that pier is no more than sufficient for the handling of the other fruits and vegetables which go there.

In view of the increased traffic both in watermelons and in other southern products, it would be impossible to-day to transact the business as it was transacted previous to 1902, and the testimony indicates that it would be, if not impossible, at least extremely expensive to procure additional facilities in New York City.



If the rate were to be reduced by the amount of the saving to the carrier or the additional expense to the shipper, then the reduction of 1 cent was not sufficient. But the question is not whether the reduction made at the time of the change was as great as the benefit derived by the railroad or as the additional burden cast upon the shipper, but, rather, are the present arrangement and the present rate just and reasonable.

The arrangement is the necessary and the proper one, and we have found that the rate is a reasonable one. The present rate to Jersey City exceeds that to Philadelphia by but 2 cents per 100 pounds for a difference in distance of nearly 90 miles. Generally at least this difference is maintained in the making of similar rates, and this Commission has usually observed in establishing these rates from the south as wide a spread between these two points as now exists. It is difficult to see upon what theory we could properly establish the same rate from all these southern points to New York as to Philadelphia.

The defendants insist that the complainants, having acquiesced for 10 years in the present arrangement, ought not now to be heard against it. This is, however, at best only in the nature of an admission upon the part of these complainants. That they did not complain immediately may indicate that they recognized at the time the necessity and propriety of the change, but it can not be urged in the nature of an estoppel against their right to insist upon what is just and reasonable now.

The Pennsylvania Company was performing for this traffic at pier 29 a service which it performed for no other bulk traffic. This was of benefit to the shippers, and there was a propriety in that these watermelons should be handled and sold where other fruits and vegetables from this section were handled. If the Pennsylvania Company could fairly continue that service we should require it to do so, but we are convinced that this can no longer be done. That being so, we have simply to inquire whether the present rate for the present service is reasonable, and upon a view of the whole situation we can only conclude that it is.

The complaint must be dismissed.

24 I. C. C.

No. 2900.

SOUTHWESTERN SHIPPERS' TRAFFIC ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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No. 2904.

SAME

v.

SAME.

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No. 4586.

DENVER CONSUMERS & SHIPPERS ASSOCIATION

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

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*Submitted April 3, 1912. Decided June 6, 1912.*

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1. Present class rates from Galveston, Tex., to Wichita, Kans., and Oklahoma City, Okla., found unreasonable, and reasonable rates prescribed for the future.
2. An attempt to name proportional rates on this traffic as requested by complainants would not under the circumstances be wise or proper.
3. The complaint in No. 2904 puts in issue the reasonableness of the through rate from the Atlantic seaboard to points in the state of Texas, but that phase of the case has not been urged in the trial and is not considered here.
4. The Commission is satisfied that the monopolistic conditions which have existed in this water traffic between the Atlantic seaboard and Galveston have resulted in excessive charges, but to what extent it is impossible to say.
5. Present class rates from Atlantic seaboard territory to Wichita, Denver, and Oklahoma City not found to be unreasonable.

*J. T. Marchand* for Interstate Commerce Commission.

*A. E. Helm, H. L. Ritter, John S. Dawson, J. H. Johnston, H. H. Haines, L. F. Moore, John Marshall, and Charles West*, for complainants and interveners.

*Robert Dunlap, T. J. Norton, D. L. Meyers, J. R. Koontz, J. S. Hershey, and A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company and others.

*M. A. Spoons and E. E. Whitted* for Colorado & Southern Railway Company and others.



*W. F. Dickinson* and *M. A. Low* for Rock Island lines.

*F. H. Wood, F. C. Dumbeck, W. F. Evans, J. M. Bryson, and E. A. Neel* for St. Louis & San Francisco Railroad Company and others.

*R. B. Scott* for Chicago, Burlington & Quincy Railroad Company.

*F. C. Dillard* and *J. R. Christian* for Union Pacific Railroad Company and others.

*M. L. Clardy, J. C. Jeffery, and H. J. Campbell* for Missouri Pacific Railway Company and others.

*Baker, Botts, Parker & Garwood* and *F. C. Dillard* for Houston & Texas Central Railroad Company and others.

*E. H. Coombs* for Missouri, Kansas & Texas Railway Company and others.

*W. T. Armstrong* for Texas City Terminal Company.

*J. C. Stubbs* and *H. A. Scandrett* for Southern Pacific Company.

*J. C. Lincoln* for St. Louis Merchants' Exchange.

*H. C. Barlow* for Chicago Association of Commerce.

*H. G. Wilson* for Kansas City Commercial Club.

*L. B. Boswell* for Quincy Freight Bureau.

*H. G. Krake* for St. Joseph Commercial Club.

*O. E. Butterfield* and *W. S. Kallman* for New York Central lines.

*H. A. Scandrett* for Galveston, Harrisburg & San Antonio Railway Company and others.

*F. A. Leland* for Southwestern Traffic Committee.

*P. W. Coyle* for Business Men's League of St. Louis.

#### REPORT OF THE COMMISSION.

##### *PROUTY, Chairman:*

The Southwestern Shippers' Traffic Association is a voluntary association embracing a number of traffic organizations, which represent to a considerable extent various business interests and localities in the states of Texas, Oklahoma, Kansas, and Colorado. The gist of the complaint made by that association in the two above cases in which it stands as complainant is that rates from the Atlantic seaboard through Galveston into this southwestern territory are excessive.

No. 2900 attacks the reasonableness of present class and commodity rates from Galveston to various interior points. The Commission is asked to establish local rates from Galveston to these points and also to put into effect "proportional" rates which are less than local rates and which are to apply to traffic which has reached Galveston by water from the Atlantic seaboard.

In No. 2904 the rates attacked are the joint through rates established by the united action of the steamship and rail lines from Atlantic seaboard territory through Galveston to these southwestern

points. The Commission is asked to establish lower reasonable joint rates.

Upon these issues hearings were had at which a great amount of testimony was taken, briefs were filed, and the cases were finally submitted, after oral argument, in November, 1910.

The real gravamen of the complaint in these cases is that the actual cost of handling business from the Atlantic seaboard into this southwestern territory through Galveston is less than by other routes, but that carriers by virtue of their control both of the rail and the steamship lines operating through that port have refused to recognize in their rates this more favorable avenue of transportation. An important question is, therefore, whether the actual cost of transportation by this route is less.

When the Commission came to examine the record as made up by the parties in the cases as submitted, it was found that this record was almost barren of evidence as to the water portion of the service. Since the issue was one which had often been the subject of controversy, and which it was desirable to permanently and intelligently settle if possible, the Commission of its own motion reopened the cases for the purpose of further investigating this branch of the subject. Testimony as to the manner in which this freight was handled by water carriers, the rates under which it had been handled and the cost of the service, so far as that could be given, was taken in the late spring of 1911 at New York and Galveston.

Before the case had been submitted after the taking of this new testimony, the petition in No. 4586 was filed. The complainant in that case represents the city of Denver, and the complaint is directed against the reasonableness of the present class and commodity rates from Galveston to that city. This same question might fairly have been raised under the complaint in No. 2900, but for some reason the city of Denver was not represented upon the hearing in that proceeding.

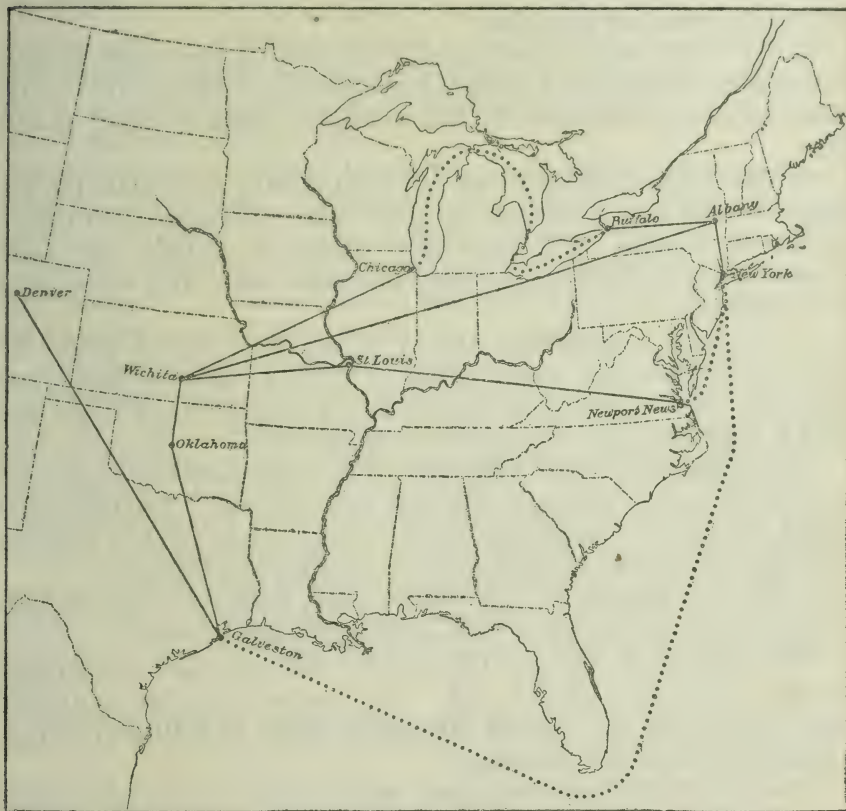
The Denver Consumers & Shippers' Association also filed a petition for leave to intervene in No. 2904, that being the proceeding which involves through rates from the Atlantic seaboard to various interior points of which Denver now asks to be considered as one. Since it was plainly in the public interest that this whole matter should be disposed of at one time, this petition for leave to intervene was granted.

Upon the filing of the complaint in No. 4586, and the petition of intervention No. 2904, certain lines leading from the Missouri River to Denver asked to intervene in both these cases for the reason that, while they did not participate in the movement of traffic from Galveston to Denver, they did handle business originating upon the



Atlantic seaboard to Colorado common points, and their assertion was that the rates under which this traffic moved over their lines were so intimately connected with the rates through Galveston to the same destination points, that any change in the Galveston rate must of necessity work a corresponding change in their rates. Upon this statement, these lines, of which the Union Pacific is an example were permitted to intervene.

No. 4586 and 2904 were now set down for further hearing at Denver, where another volume of testimony was taken. Additional



briefs were filed and the case was again orally argued before the full Commission.

While, as will be seen from the foregoing statement, the matters involved are of great importance in the estimation of the parties, and while an enormous record has accumulated, the issues are nevertheless comparatively simple. They can be best understood by reference to the accompanying map.

Atlantic seaboard territory, as defined in the tariffs of the defendants, depends somewhat upon the point of destination. The term, as

used in the schedules under consideration, embraces, roughly speaking, New England, New York, New Jersey, Delaware, Maryland, all of Pennsylvania except the western border, a large portion of West Virginia, and Virginia north of the line of the Norfolk & Western Railway. The same rate applies as a blanket from all this territory to the southwestern points under consideration. Traffic originating in this territory may be transported to these points by one of four general routes. For the purpose of clearly indicating these different routes an interior point, like Albany, N. Y., may be selected upon the east and Wichita, Kans., upon the west. Between these points the following routes are available:

1. The traffic may move all-rail. The line of movement is indicated upon the map by a straight line drawn from Albany to Wichita, and the actual movement by rail would be almost as direct as this line.

2. The traffic may move by rail from Albany to Buffalo, at the head of Lake Erie, thence by the great lakes to Chicago, and thence by rail to Wichita. The route from Albany to Buffalo, and again from Chicago to Wichita, is nearly a straight line. The water route is circuitous.

3. The third route is from Albany to New York by rail, thence by water to Norfolk, and thence by rail to Wichita. Here again the rail movement from Norfolk to Wichita is in a comparatively direct line and is indicated upon the map by a straight line.

This traffic might move by water to some other south Atlantic port like Charleston or Savannah, and from thence by rail. The rail movement, instead of being through St. Louis, might be and often is through some lower Mississippi River crossing like Memphis.

4. The last route is by rail to New York, from New York to Galveston by water, and from Galveston to Wichita by rail.

The railroads in this country were for the most part constructed from the Atlantic seaboard west. The first lines into the southwest were built from the various Mississippi River and Missouri River crossings in a westerly direction.

The lines via the great lakes and via the south Atlantic ports have been long in operation. The old lines, therefore, are 1, 2, and 3 as above described and are usually termed the east and west lines.

The line via New Orleans to a certain part of this territory is a comparatively old one; that via Galveston was the latest to be developed. Within comparatively recent years the United States government has expended large sums of money upon the port of Galveston, and that port by reason of its location and the shipping facilities which the improvement of its harbor has given it, has



become an important one. In the year 1911 it took rank in the value of its exports second only to New York.

The lines of railroad leading from Galveston north into this southwestern territory have also been much strengthened in recent years. Their physical condition has been improved, the density of their traffic has increased, and they have come to rank among the substantial railroads of the country.

In view of the transportation facilities which now exist both by water and by rail, the complainants earnestly insist that the route via Galveston into this southwestern territory is now the cheapest, but that the east and west lines by securing control of the rail lines leading north from Galveston, and by controlling either directly or indirectly the water lines from New York to Galveston, have prevented the natural movement of traffic via this route by maintaining unjust and unreasonable rates.

It was pointed out by the defendants, and is undoubtedly true, that there has always been, and must continue to be, a relation in the rates by different lines from Atlantic seaboard territory into this southwestern country, so that any marked reduction of the transportation charge by one route must be met by a corresponding reduction via all other routes if they continue in the business.

It was further pointed out that most of the articles consumed in this southwestern territory are manufactured both in the middle west and upon the Atlantic seaboard, and that any reduction in rates from the Atlantic seaboard into this territory would inevitably be followed by demands from the middle west for a similar reduction. Past experience shows that a reduction from the Atlantic seaboard has been followed by a corresponding reduction from St. Louis and similar territory and vice versa. The commercial interests of St. Louis and Chicago have intervened in these proceedings and insist that whatever reduction is made from the Atlantic seaboard shall be met from those cities.

It can not be doubted, therefore, that a material reduction in these rates from producing points in the east to consuming points in the southwest would lead to widespread reductions and involve a very material loss of revenue to a great number of carriers.

While, however, the fact that a reduction of the rate through Galveston must lead to other extensive reductions is a reason why this Commission should proceed with great caution, it is no conclusive reason against the granting of the prayer of these complainants. This territory is entitled to reasonable rates of transportation. One market of supply is the Atlantic seaboard, and one avenue of carriage from that market is through the port of Galveston. If the rates

imposed via that route by these defendant carriers are unreasonable it is our plain duty to reduce them, irrespective of the consequences to other routes or other markets.

We have, therefore, for determination this single question, Are rates from the Atlantic seaboard into this southwestern territory reasonable *per se*? And this as presented by the complainants divides itself into two other questions:

1. Are the rail rates from the port of Galveston to interior destinations reasonable?

2. Are the combined rail-and-water rates from Atlantic seaboard points to southwestern destinations reasonable?

Many points of destination are involved throughout this southwestern territory, but in answering these questions Denver, Wichita, and Oklahoma City may be selected as fairly representative.

Both class and commodity rates are involved, but in the presentation of the case reference has been made almost exclusively to the classes, and these rates only will be referred to in this discussion.

We proceed, therefore, to inquire whether class rates now in effect from Galveston to these selected points are reasonable, beginning with Denver.

The present class rates from Galveston to Denver are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	180	148	110	84	65	81	62	52	43.5	36

In 1909 the Commission, after elaborate investigation and careful consideration, established a scale of class rates from Chicago to Denver. The Denver rate applies in all these cases to Colorado common points, and distances to these various points differ somewhat. The average distance from Galveston would be approximately 1,100 miles, and the average distance from Chicago substantially the same. The conditions of transportation from Chicago to Colorado common points are somewhat more favorable and might well justify a somewhat lower rate than from Galveston. The rates established from Chicago were as follows: *Kindel v. N. Y., N. H. & H. R. R.*, 15 I. C. C., 555.

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	180	145	110	85	67	80.5	63	54	47	40

In 1910 this Commission, again after very careful consideration, established a scale of class rates from Missouri River to Utah common points. *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218.

The distance from the Missouri River to Utah points is approximately the same as from Galveston to Denver. The conditions of



transportation are approximately the same. The rates established were as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	190	162	142	119	98	98	77	70	50	42

From a comparison of the above three schedules it will be seen that the present rates from Galveston to Denver are slightly lower than those fixed from Chicago to Denver and materially lower than those established from the Missouri River to Salt Lake City. These cases are all of recent date and were all deliberately decided. Unless we are prepared to reverse those decisions and to put in effect materially lower schedules than were then found reasonable, it is evident that the contention of the complainants that the present class rates from Galveston to Denver are unreasonable can not be sustained, and it is not.

The present class rates from Galveston to Wichita are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	147	125	104	96	75	79	70	58	46	39

In 1908 class rates from St. Louis to Texas common points were materially advanced and this advance was attacked by complaint of the railroad commission of Texas in the interest of that state. After a most exhaustive investigation the Commission finally, in February, 1911, established the following schedule. *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463.

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	147	125	104	96	75	79	70	58	46	39

This scale applies from St. Louis to Texas common points, and therefore covers distances which vary greatly in length. In the trial of that case much was said as to the average haul. While the parties did not agree, it fairly appears that the average haul to which this schedule applies would be not far from 800 miles. From Galveston to Wichita the distance is 700 miles, and the conditions of transportation are substantially identical. If, therefore, we are to adhere to our decision in that case, it must be found that the present rates from Galveston are somewhat in excess of what would be just and reasonable. We are of the opinion that the following rates would be reasonable and that the present rates are unreasonable to the extent that they exceed this schedule:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	132	112	94	86	68	71	63	52	41	35

The distance from Galveston to Oklahoma City by the short line is about 550 miles; to Wichita, as just stated, 700 miles. The class rates now in effect from Galveston to Oklahoma City are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	133	115	98	89	70	75	65	53	42	35

Using as the measure of a reasonable rate to Oklahoma City the schedule which we have just found reasonable to Wichita, we are of the opinion that the present class rates from Galveston to Oklahoma City are unreasonable, and that such rates for the future should not exceed the following:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	112	96	80	73	57	60	54	44	35	30

The thing for which the complainants are contending is a lower transportation charge from the Atlantic seaboard to these points of consumption. The reductions suggested to Wichita and Oklahoma City will for this purpose be of no avail to Wichita and of but little, if any, benefit to Oklahoma City. This traffic comes by water to Galveston and pays a port-to-port rate, which is not under the jurisdiction of this Commission. From Galveston it moves upon the local rate to the interior point. Now, when the local rates which we have found reasonable are combined with the port-to-port water rates which have been in effect for any considerable time in the past, the resulting rates are higher than the joint through rates which are now in effect.

The complainants realize that this must be so, and they therefore ask us to treat the haul on this business from Galveston as part of a through transportation, which it in fact is, and to apply to it from that port a rate lower than the local rate. We are asked to do this by establishing from Galveston proportional rates applicable to traffic which has reached that port from the Atlantic seaboard by water.

The defendants deny the jurisdiction of the Commission to fix a rate of this character, and they further urge that if the jurisdiction exists it ought not to be exercised under the circumstances of this case.

It is well understood that carriers voluntarily maintain so-called export and import rates to and from the various ports which are less than their domestic rates. Such rates are maintained through the port of Galveston by the rail carriers, defendants in these proceedings. The maintenance of so-called proportional rates, which differ from corresponding local rates, to and from junction points applicable to traffic which originates or goes beyond such points is very general. Rates are named from interior points to various ports on domestic business which are less than the local rates, and which differ according to the final destination of the traffic.

The Commission has recognized the propriety of such rates, to an extent at least, and has at times acted upon those rates when established by the carriers.



There is much to be said in favor of the exercise of that jurisdiction in this case, if it exists. Water transportation between the Atlantic seaboard and Galveston has never been open to free competition. In recent years this business has been largely controlled by two lines of steamships which seem to have established and maintained a schedule of rates mutually satisfactory. On several occasions independent boats have endeavored to break into this traffic and rates have been temporarily much depressed, but the railways have declined to recognize these ships or to establish joint rates with them, and the result has finally been either that the line has withdrawn from the business, as in case of the Lone Star line in 1908, or been absorbed by a competing line, as was the Texas City line in 1911.

The complainants assert that the benefit of water competition between the Atlantic seaboard and Galveston never can be enjoyed, and that the fair cost of this water transportation can not be determined unless carriers are compelled to handle this through business to and from the port of Galveston upon equal terms as to all water carriers.

It is evident that such proportional rates if named must be confined to the traffic to which they apply by some proper system of policing. It is also evident that unless there are through arrangements for the movement of this business from the point of origin to destination, involving the issuing of through bills of lading, and the collection and distribution among the different carriers of the total charges either at the point of origin or at destination, the rates themselves will not be of much benefit to the general public, and may result in discrimination in favor of those who are so situated as to be able to take advantage of them.

Assuming that the right to establish these proportional rates exists, it ought not to be exercised unless such conditions can be attached to their use as will make them nondiscriminatory and of general advantage.

We have also considered with considerable care the amount of the rate itself which we might fix. We have held that a first-class rate of \$1.80 was reasonable from Galveston to Denver. The complainants ask us to fix a proportional rate between these points of 72 cents. The difference between proportional rates requested and the local rates found reasonable from Galveston to Wichita and Oklahoma City, while not as great in proportion as the above, is nevertheless a large percentage of the local rates. When it is remembered that in the *Burnham-Hanna-Munger case*, 14 I. C. C., 299, we finally applied from the Mississippi River a rate only 5 cents lower to traffic coming from beyond than the local rate, it will be seen that no such difference as that suggested by the complainants could be

recognized, and it is admitted by them that unless figures approximating these can be used no special benefit would be obtainable from the establishment of such rates.

It is also true, as claimed by the defendants, that substantially the same rates should apply over all lines, and that the establishment of proportional rates sufficiently low to produce any effect would result in continual fluctuation by this line.

Looking at this whole situation and having in mind particularly the rates which we must establish in justice to the rail carriers, we are of the opinion on the whole that to attempt to name proportional rates, as requested by the complainants, would not under the circumstances be a wise or proper move. These rail carriers should be required to maintain reasonable rates with all responsible steamship lines plying between the Atlantic seaboard and Galveston. They should be required to accept as their division of the through rate a reasonable sum, which may well be substantially less than their just local charges. If any steamship company is content to take as its division materially less than what is now accepted by the present steamship lines, that is a substantial reason for a reduction of the total through charge, but we are strongly of the opinion that the establishment of proportional rates would introduce a novel and untried element into this situation, that it would result in no general benefit, that it might lead to discrimination in many instances, and that upon the whole the experiment ought not to be tried.

Indeed, the complainants themselves, realizing the impossibility of obtaining proportional rates low enough to be of much avail, have devoted themselves mainly to the attempt to demonstrate that the present joint rates are unreasonable, and this is the real question for determination.

The complaint in No. 2904 puts in issue the reasonableness of the through rate from the Atlantic seaboard to points in the state of Texas; but that phase of the case has not been urged in the trial and is not considered here. Since the advent of the Texas City line port-to-port rates have been so reduced that the combination through Galveston of the port-to-port rate and the rate of the Texas commission has, in all cases, made a lower through charge than the joint through rate. No business moves, therefore, upon the joint rate, and no joint rate which this Commission would be likely to establish would be as low as the combination. Hence shippers in Texas are satisfied with the present situation, especially as long as the high rate must be paid by their competitors in Oklahoma.

We proceed to consider, therefore, the reasonableness of these through rates to points outside the state of Texas, taking, first, Wichita and examining the first-class rate, which is now \$1.80.



This rate applies as a blanket from all points in Atlantic seaboard territory as defined by these tariffs. This territory, it will be remembered, is of considerable extent. Lines of railroad leading from interior points to New York, which is the port from which all sailings occur, generally have rails of their own and are always parts of through routes by which this traffic could be handled directly from the point of origin to the southwest by all-rail movement. They are therefore antagonistic to the movement via Galveston and exact for their service from the interior up to New York full local charges. The line from the Atlantic seaboard via Galveston really begins at New York, and the expense of bringing this traffic up to New York and getting it to the dock of the steamship at New York is an outlay which must be borne by the Galveston line.

The defendants went into an elaborate computation with a view to determine the average rail haul from the interior point to New York, reaching the conclusion that this was slightly in excess of 300 miles. But the method employed and the conclusion reached are worthless for the purpose of this discussion. Each station in Atlantic seaboard territory was taken and the average distance arrived at by adding together the sum of the distances from each station and dividing by the number of stations. A result so reached is of no significance here, since the amount of traffic originating at each station is not by any means the same.

A very large proportion of the business which seeks the water route via Galveston comes from New York itself or from that industrial center, and pays virtually no rail transportation charge. Much of it originates at comparatively nearby points. The record contains no data from which an accurate conclusion can be drawn; but, making the best estimate possible, it seems probable that the average rail haul estimated upon all traffic, including that originating in the city of New York, would be equivalent to 100 miles.

The first-class rate applicable to a haul of this distance in that territory would be about 25 cents, and it is probably just to allow these defendants to charge 25 cents per 100 pounds against the expense of bringing traffic which moves under the first-class rate to the city of New York.

There is in addition to this a drayage charge upon traffic reaching New York by rail and perhaps a drayage absorption in case of traffic originating in New York, which is fairly equivalent to another 5 cents per 100 pounds on first-class business.

This freight is handled under what is known as an insured bill of lading; that is, the marine insurance is paid, not by the shipper, as is usually the case with water-borne traffic, but by the carrier on account of the shipper, and it was said that this would amount in case of first-class business to at least 5 cents per 100 pounds more.

These originating charges are deducted from the through rate before the division is made, and so deducting there remains to the water line from New York to Galveston and the rail line from Galveston to Wichita out of the \$1.80 rate \$1.45, which is divided, 35 per cent to the water line and 65 per cent to the rail line. Stating these divisions in cents, the rail line would receive 94½ cents, the water line 50½ cents.

We have held that a first-class rate from Galveston to Wichita of \$1.32 would be reasonable. The division received by the rail carrier ought to be less than its local rate, but it can hardly be said that 94½ cents would be an unreasonable charge for the rail part of this through service.

It remains to inquire whether the division in this case is upon a fair basis or whether the water line receives more than is justly its due, and whether, therefore, the through rate can be properly reduced by reducing the division of the water carrier.

It has already been stated that this record, as originally made up by the parties, contained almost no evidence upon the cost of water transportation or the reasonable charge for handling this business from New York to Galveston. For this reason the case was reopened by the Commission upon its own initiative and a considerable amount of testimony bearing upon that point taken. But the record even now affords no basis for a satisfactory conclusion, nor indeed is it easy to see how such a basis can be supplied.

The conditions governing water transportation are entirely unlike those pertaining to transportation by rail. The cost of operating the ship is practically the same whether it carries a full cargo or no cargo. The profitableness of this operation under a given schedule of rates would depend wholly, therefore, upon the ability of the ship to obtain a proper load. Much would depend, also, on the possibility of obtaining a loading in both directions.

We have before us the rates charged from port to port before the Texas City line began operations, and the rates in effect at the time of the hearing. The manager of the Texas City company stated that his present rates were reasonably satisfactory, although they were much less than those formerly in effect.

We are satisfied that the monopolistic conditions which have existed in this water traffic between the Atlantic seaboard and Galveston have resulted in excessive charges, but to what extent it is impossible to say.

As bearing upon the reasonableness of these through charges and of the divisions before us an attempt was made to determine the number of water miles which should be taken as equivalent to one rail mile. It was said by the defendants that the ordinary proportion was about three to one, while the complainants insisted that in



the case before us, at least, not less than seven to one would be the fair proportion.

This record shows that the expense of operating the ship upon the ocean is not great, and that the terminal or dockage expenses are the more serious item. It was said that of the total expenses 60 per cent were at the dock and 40 per cent upon the ocean. Plainly, therefore, in determining the number of water miles which shall be set over against a rail mile as the basis of division everything must depend upon the length of the haul. The cost of transportation per mile by water is comparatively high for short distances and very small for long distances.

It is also evident that much must depend upon the character of the rail mileage with which the division is to be made. The cost of the water transportation between New York and Galveston is the same whether the traffic is to be taken from New York to an interior point or to Galveston, but the first-class rate for a given distance from Galveston is twice that from New York.

Plainly it is impossible to determine with exactness the number of rail miles which should be charged against this water haul, but for the purposes of this discussion we assume that the contention of the complainants is in the main correct. The total distance from New York to Galveston is slightly less than 2,200 miles, and we have assumed that this distance, as compared with a rail haul of the character of that from Galveston to either Wichita or Denver, would be fairly equivalent to 350 miles.

The distance from Galveston to Wichita is 700 miles, and upon the basis above named the rail carrier would be entitled to two-thirds, or 66 $\frac{2}{3}$  per cent, of the net amount for division, which is almost exactly the figure used.

We must find, therefore, that the rate of \$1.80 from Atlantic seaboard territory to Wichita is not excessive; and what is true of the first-class rate is true of the other classes.

The first-class rate from Atlantic seaboard territory to Denver is \$2.34. Deducting from this 35 cents, the gathering charge at the eastern end, which must be paid before the through rate is divided, there is left \$1.99 to cover the transportation from New York to Denver.

Assuming that the water distance from New York to Galveston is equivalent to 350 rail miles and that the distance from Galveston to Denver is 1,100 miles, we have a total rail haul of 1,450 miles which this rate covers.

We have just held that \$1.80 from Galveston to Denver for 1,100 miles is not excessive. In the *Salt Lake case*, previously referred to, we established as reasonable a first-class rate of \$1.90 for an average haul

of about 1,100 miles. In the *Reno case*, 19 I. C. C., 238, we fixed a first-class rate of \$2.50 from the Missouri River to Reno, a haul of about 1,600 miles, and to Winnemucca, a distance of approximately 1,400 miles, the rate was made \$2.38.

If these rates, and they were all named in cases recently decided and carefully investigated and considered, are to be taken as reasonable, then certainly we can not hold that \$1.99 is excessive for a total haul of 1,450 miles over railroads of the character of those between Galveston and Denver. We are therefore constrained to hold that the rate from Atlantic seaboard territory to Denver is not unreasonable.

There remains for consideration the rate from Atlantic seaboard territory to Oklahoma City, which is the same as to Wichita—\$1.80 first class.

The distance from Galveston to Oklahoma City is about 550 miles. Adding to this 350 miles for the water line from New York, there results a rail distance of 900 miles. Deducting from the through rate the gathering charge, \$1.45 is left to be applied to this rail haul of this distance.

In the *Texas Commission case*, already referred to, we approved a first-class rate of \$1.47 for an average distance of approximately 800 miles. In this case we have just established as reasonable a rate of \$1.32 from Galveston to Wichita, a distance of 700 miles. Upon analogy with these cases in the same territory it must be held that \$1.45 first class is not an excessive charge from Atlantic seaboard territory to Oklahoma City.

The hardship which the present adjustment of rates imposes upon central Oklahoma points has been strongly urged upon the attention of the Commission in this proceeding. The Texas commission establishes rates upon a mileage basis up to a certain distance beyond which the rate applies as a blanket to all Texas common points. Thus, the first-class rate from Galveston for a distance of approximately 300 miles is 87 cents and this same rate applies to the northern border of Texas, a distance of 450 miles. This gives the distributing cities in the north of Texas, which wholesale in competition with Oklahoma points, a distinctly lower rate from the Atlantic seaboard than Oklahoma enjoys, and undoubtedly results in a decided advantage to Texas jobbing centers in case of articles purchased upon the Atlantic seaboard.

But this discrimination is one which this Commission is powerless to remedy. The Texas rates are a matter of domestic concern over which we exercise no control. The so-called discrimination results not from the Texas rates, but from the fact that under the decision of the Supreme Court of the United States the shipper, by



taking possession of his traffic at Galveston, can obtain the benefit of the water rate to Galveston and the rail rate from Galveston, although the shipment is, in point of fact, an interstate movement. If the results which flow from this holding are not satisfactory Congress may easily provide that a movement which is interstate in fact shall not be converted into two local movements by an intervening possession. In that case this Commission could establish a reasonable rate to Texas points which must be applied to all shipments from the Atlantic seaboard to those points, and discrimination resulting from abnormal conditions like that before us would be rendered impossible. To-day this Commission, while it recognizes the existence of a discrimination, can not pronounce it unlawful.

Upon the east Oklahoma City is in competition with jobbers at Fort Smith, Ark., which is alleged to enjoy rates much lower than its relative location would warrant. The carriers assert that this is due to competitive conditions, but that situation is not before us. We are considering here simply the reasonableness of the rate from the Atlantic seaboard via Galveston.

The whole case of the complainants rests upon the assertion that the cost of transportation via Galveston is less than via other routes, and that if this route, which is termed the "natural" route, were given its legitimate opportunity, lower rates would result. But can it be affirmed with confidence that the cost of handling business from Atlantic seaboard territory is less by this route than by, for example, the rail-and-lake route to Chicago?

The distance from Chicago to Denver is slightly less than from Galveston to Denver. The distance from Chicago to Wichita is almost exactly the same as from Galveston to Wichita. If, therefore, this traffic can reach Chicago from Atlantic seaboard points at as low a transportation charge as Galveston, then there is no reason why the rate through Galveston should be lower than the rail-water-rail rate through Chicago.

We have already seen that the cost of delivering traffic from Atlantic seaboard territory upon the dock at New York, from which it is taken by the steamship to Galveston, is equivalent to a rail haul of 100 miles plus a drayage charge. The average rail haul from this same territory to Buffalo would be probably 300 miles. From Buffalo to Chicago the distance by water is approximately 900 miles. When the greater competition from these points to Chicago by rail and water as well as by all-rail lines is considered, can it be asserted that the rate on the average from Atlantic seaboard territory to Galveston should be less than that to Chicago?

Let this situation be restated. It costs the Galveston line 30 cents per 100 pounds upon the average to concentrate from Atlantic sea-

board territory first-class freight upon the dock at New York. There is a further charge for marine insurance, which is borne by the carrier, but which, in comparing the Galveston rate with the Chicago rate, may be disregarded, since the rail-and-water rate to Chicago also carries with it at the present time an item of marine insurance.

We have held that the water haul from New York to Galveston may be fairly equivalent to a rail haul for 350 miles in southwestern territory. The Texas commission names a first-class rate of 80 cents for 245 miles, and the Commission has approved this as reasonable in the *Shreveport case*, 23 I. C. C., 31. We have just found that \$1.12 is a just rate for 550 miles from Galveston to Oklahoma City. In the *Cincinnati case*, 18 I. C. C., 440, the Commission established as reasonable a first-class rate of 70 cents for a distance of 336 miles from Cincinnati to Chattanooga, and this rate, as stated in that opinion, is below the ordinary rate in southern territory for a corresponding number of miles. We could not, certainly, establish for a distance of 350 miles with any consistency a first-class rate of less than 70 cents.

But suppose, instead of taking this rate, we take the low competitive rate in effect at one time via the Texas City line, which was 50 cents, and add to that the gathering charge of 30 cents. The result would be a first-class rate of 80 cents from Atlantic seaboard territory to Galveston, while the rate now in effect from New York to Chicago via rail and water is 62 cents, and the average rate from Atlantic seaboard territory would not probably differ much from that figure.

The complainants have suggested that we ought to establish a rate from New York City lower than from the remainder of Atlantic seaboard territory and that we should compel rail lines leading from various points in that territory to New York to join in through rates from the point of origin.

It is somewhat doubtful whether the commission has jurisdiction to do this even though the complaint was so framed as to cover the making of such an order. The statute requires us to give carriers the benefit of the long haul in establishing joint rates. Could we, for example, taking Albany again as a point of departure, establish via the New York Central, through New York to Wichita, a joint through rate, thereby depriving the New York Central of the longer haul on this business, either rail-and-lake or all-rail?

But, assuming that we might do this, the net result could only be a comparatively slight reduction in rates as at present constructed, namely, the difference between the local rates of originating lines to New York City and a fair division of the through rate to those lines. The carriers protested against any change in the present



blanket system and the complainants did not insist upon it, except as one means of possibly forcing lower rates than the present.

Great stress is laid by the complainants upon the fact that lines leading from the south Atlantic ports accept for their service up to the Mississippi River the low divisions which they do. It is said that many of these lines are no stronger than lines leading from Galveston to Wichita and to Denver, and we are asked to apply as divisions to these latter lines the same amounts per mile which the south Atlantic rail lines accept.

This argument overlooks the fact that the rate via these south Atlantic ports is strictly competitive. It is the rate from New York to Chicago, whether it be by rail, by rail-and-water, or by all-water which fixes the charge from New York through the south Atlantic port to the Mississippi River. That rate must be less than the all-rail rate or business will not move via that route. Hence, the rate can not be said to be voluntary and ought not to be used as a standard of comparison.

It was said that owing to the disadvantages of the Galveston route in length of time, etc., a differential should be accorded to that route; but this is a matter in which these complainants have no interest. They are satisfied with the service via the south Atlantic ports, which is better than that via Galveston. They frankly state that the purpose of this proceeding is to secure lower rates to which they believe they are entitled by the Gulf. We do not, therefore, consider the question of differentials. We simply hold that present rates from Atlantic seaboard territory to these southwestern points are not unreasonable.

No reference has been made to many of the facts shown in evidence and the arguments adduced in the course of this proceeding. The fundamental contention has been stated, and with this contention after the most patient investigation we are unable to agree.

The complaints numbered 2904 and 4586 will be dismissed. An order will be entered in No. 2900 establishing from Galveston to Wichita and Oklahoma City the class rates found reasonable.

No. 2043.

EAST ST. LOUIS COTTON OIL COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

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*Submitted April 4, 1912. Decided June 6, 1912.*

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Action of defendants in maintaining from various stations in Arkansas, Oklahoma, Tennessee, and Mississippi to East St. Louis, Ill., rates on cottonseed higher than contemporaneously charged on cottonseed oil found to be in violation of section 3 of the act.

*S. H. Cowan* for complainant.

*R. Walton Moore* for Illinois Central Railroad Company and Mobile & Ohio Railroad Company.

*Henry G. Herbel* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

*F. H. Wood* for St. Louis & San Francisco Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This proceeding is supplemental to *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.*, 20 I. C. C., 37, in which was challenged the reasonableness of defendants' rates on cottonseed in carloads from various stations in Oklahoma, Arkansas, Mississippi, Tennessee, and Missouri to East St. Louis, Ill., and their alleged discriminatory character when compared with rates on the products, including oil, meal, cake, hulls, and linters. The rates in issue were not found to be unreasonable and the complaint was dismissed. In its report the Commission said, with reference to the relation of rates on cottonseed and the products:

The general rule is that manufactured products bear higher rates of transportation than does raw material, and it is founded in reason, because ordinarily there is a substantial difference between the value of the one and that of the other, and frequently there is a greater degree of risk incident to the transportation and care of the manu-



factured product than of the raw material. The practice, however, is not universal, and is departed from in some instances because the reasons for the distinction are lacking and in other cases because of countervailing commercial and market conditions and considerations. Within the last-named class of exceptions to the general rule perhaps would fall the case of grain and grain products, which are for the most part carried at the same rate. A frequent exception to the first-named class is in cases where from a single raw material like cottonseed there are several resulting distinct products and by-products, widely differing in value, weight, bulk, and the uses to which they are put. The general practice referred to more nearly universally applies with respect to the primary or principal product or products than to the secondary products or by-products from the same raw material. The primary purpose of crushing cottonseed is to extract the oil, which is by far the most valuable product, and the rates thereon are universally higher than on the cottonseed from which it is produced. Cottonseed meal and cake are approximately of the same value as the seed, and are generally carried at the same or only slightly lower rates, whereas the lower grade by-products, hulls and linters, are transported at still lower rates.

\* \* \* \* \*

The rates applicable to each kind of traffic necessarily must be made with reference to the facts, circumstances, and conditions governing the production, transportation, and marketing of the respective products, and in this case we are unable to find that the charges on cottonseed products afford a strict measure for the reasonableness of the rate on cottonseed.

It is the duty of the Commission to see that rates are just and reasonable to all parties interested, including not only the manufacturers of the seed at the respective points, but the carriers and the consumers. With the exception perhaps of the so-called long-and-short-haul provision of the act, the law has not undertaken to prescribe for the guidance of the Commission any measure of reasonableness and justice of the rates involved, and we are therefore left to the facts, circumstances, and conditions affecting the particular traffic. In the light of these we do not find the rates here involved to be unreasonable, unjust, or unduly discriminatory.

The Commission's report was issued in the understanding that the rates on cottonseed were in general lower than on the products, particularly oil, in the general territory under consideration. In the petition for rehearing now filed complainant calls attention to certain specific rates on seed from Arkansas, Tennessee, and Mississippi which are higher than on oil, meal, and cake, and asks for a reconsideration of the original evidence and for an order in accordance with the spirit and intent of the Commission's findings in the respect referred to. No new evidence has been taken, but the case has been reargued upon the original record.

The specific rates and contentions now brought to our attention are:

(1) The St. Louis, Iron Mountain & Southern's rates on cottonseed from Arkansas points to East St. Louis exceed its rates on the products, although this carrier operates in the same general territory as the St. Louis Southwestern Railway, via which line it is stated the rates on seed do not substantially exceed the products rate. A comparison of the rates, in cents per 100 pounds, via these respective carriers follows.

24 I. C. C.

*Comparison of the rates on cottonseed and cottonseed products, in cents per 100 pounds.*

To East St. Louis from—	Seed.		Meal.		Oil.	
	St. L. S. W.	St. L., I. M. & S.	St. L. S. W.	St. L., I. M. & S.	St. L. S. W.	St. L., I. M. & S.
Little Rock, Ark.....	15	20	13	13	15	15
Pine Bluff, Ark.....	15	22	13	13	15	15
Texarkana, Ark.....	17½	25	18	18	23	23
Walnut Ridge, Ark.....	.....	15	.....	13	.....	15
Newport, Ark.....	.....	17	.....	13	.....	15
Paragould, Ark.....	12½	12½	.....	.....	.....	.....

While, as shown above, rates on seed from Little Rock and Pine Bluff, Ark., to East St. Louis are 20 and 22 cents, respectively, defendants charge but 18 cents on meal and hulls from the same points to Peoria, Ill., and but 21 cents on oil to Chicago, although these destinations are much farther distant than is East St. Louis from points of origin. Attention is also called to the difference of 2½ cents in the rate on seed from Paragould and Walnut Ridge, from which points the difference in distance to East St. Louis is only 5 miles.

(2) Rates on seed are higher than on the products via other lines, as shown below:

#### ILLINOIS CENTRAL.

[Rates in cents per 100 pounds.]

	Seed.	Meal.	Oil.
Dyersburg, Tenn.....	14	10	14
Covington, Tenn.....	14½	10	14
Jackson, Tenn.....	14	12	17
Jackson, Miss.....	25	15	24
Aberdeen, Miss.....	25	15	24

#### MOBILE & OHIO.

	Seed.	Meal.	Oil.
Jackson, Tenn.....	15	12	17
Corinth, Miss.....	24	15	24
Meridian, Miss.....	25	15	24

#### LOUISVILLE & NASHVILLE.

	Seed.	Meal.	Oil.
Brownsville, Tenn.....	16	13	17

It is contended that the above rate of 25 cents on seed from Jackson, Miss., to East St. Louis is unreasonable compared with the rate of 27 cents on oil to Chicago, and of 17½ cents on meal to Peoria from the same points; and that the rate of 24 cents on seed from Corinth, Miss., to East St. Louis is unreasonable compared with the rate of 25 cents on oil from Corinth to Chicago.



(3) Defendants' rates on cottonseed to East St. Louis are unreasonable compared with their charges on cottonseed meal to various points in the states of Illinois, Wisconsin, Michigan, Indiana, Ohio, and Kentucky, as shown in detail in a tabulated statement, which in view of the disposition of the case herein we do not deem it necessary to reproduce.

(4) Defendants' rates on seed of 20 cents to East St. Louis from the Fayetteville, Ark., to Okmulgee, Okla., branch of the St. Louis & San Francisco Railroad is unreasonable compared with the rate of 23½ cents from stations on the same and other lines in southern Oklahoma, including Ardmore, Madill, and Durant, and when compared with the rate of 16½ cents in effect from the stations on this branch prior to December 10, 1908. The average distance from these stations to St. Louis is 392 miles.

(5) It is unreasonable to charge a higher rate on seed to East St. Louis than to St. Louis, from producing points in Missouri, to which points the rates on the products are the same from East St. Louis as from St. Louis.

It will be noted that with the exception of the rates from St. Louis & San Francisco stations between Fayetteville, Ark., and Okmulgee, Okla., and of the Missouri rates to St. Louis and East St. Louis, the petition for rehearing is based upon the Commission's expression in the original report with reference to the relation of the rates on cottonseed and its products and the statement therein that it is the universal practice to carry lower rates on the seed than on the products, particularly oil. We are not prepared to hold upon the record before us that the rates on meal and cake afford a strict measure of the reasonableness of the rates on seed. We are of opinion, however, that rates on seed should in no event exceed the rates contemporaneously charged on oil. We therefore find that in maintaining to East St. Louis, Ill., rates on cottonseed in excess of their rates contemporaneously charged on cottonseed oil defendants subject the former commodity and the shippers thereof to undue prejudice and disadvantage, in violation of section 3 of the act to regulate commerce, from which prejudice and disadvantage an order will be entered to cease and desist. While this finding and our order based thereon apply only to the points of origin specifically named in the original petition, namely, Little Rock, Pine Bluff, Helena, Morrillton, Jonesboro, Fort Smith, and Hope, in Arkansas; Cushing, Durant, Mangum, Wagoner, Muskogee, Chickasha, Guthrie, Weleetka, Ardmore, Sallisaw, and Oklahoma City, in Oklahoma; Corinth, Okolona, Greenwood, Greenville, Jackson, and Vicksburg, in Mississippi; and Jackson, Trenton, Ripley, Memphis, and Dyersburg, in Tennessee; we shall expect the carriers to adjust their rates from other stations

on their lines in the states named to East St. Louis on the same relative basis.

We are not convinced that the rates on seed from the Fayetteville-Okmulgee branch of the St. Louis & San Francisco are unreasonable in themselves. The contention that rates from Missouri stations should be the same to East St. Louis as to St. Louis is not covered in the original petition, and we do not feel that we should, upon this record, pass upon the propriety of the present adjustment.

An order will be entered accordingly.

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No. 4175.

WESTERN TRAFFIC ASSOCIATION ET AL.

v.

BOSTON & MAINE RAILROAD ET AL.

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*Submitted February 9, 1912. Decided June 3, 1912.*

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The application of one and one-half times the first-class rating on bottle-washing machines shipped from Lynn, Mass., to San Francisco, Cal., found unreasonable. Reparation awarded.

*W. W. Brackett* for complainant.

*E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

The complaint is filed on behalf of Bauer-Schweitzer Hop & Malt Company, which is engaged in the manufacture and sale of brewers' supplies, with place of business at San Francisco, Cal. In its petition, filed June 15, 1911, it is alleged that it was charged an unreasonable rate for the transportation of two bottle-washing machines over the lines of the defendants from Lynn, Mass., to San Francisco. Reparation is asked.

October 25, 1910, there was shipped to San Francisco from Lynn two bottle-washing machines. The total weight of the shipment was 690 pounds, and transportation charges in the sum of \$31.05 were paid thereon, based on one and one-half times the first-class transcontinental rate, or \$4.50 per 100 pounds. The charges were assessed under western classification, the description being "machinery, n. o. s."



There was no commodity rate applicable. The transcontinental west-bound tariff in effect at the time provided a rate of \$2 per 100 pounds from Lynn to San Francisco for "washing machines, including wringers for same; also dish-washing machines, boxed or crated." The defendants contend that the \$2 rate applies only to clothes-washing and dish-washing machines, of which there is a large and continual movement, and that there has never been any demand for commodity rates on bottle-washing machines.

There was at the time of the shipment in question and there is now in effect a class rate of \$3 per 100 pounds for the transportation of tub bottle-washing machines applicable from and to the points involved. We are of the opinion from an examination of the record and the evidence submitted that the bottle-washing machines in question should not take higher rates than those applied to tub bottle-washing machines. The former occupy no more space, are made of iron, and are of greater weight.

Upon the record we find that the rate of \$4.50 per 100 pounds charged for the transportation of the bottle-washing machines from Lynn to San Francisco was unreasonable to the extent it exceeded \$3 per 100 pounds. We further find that the Bauer-Schweitzer Hop & Malt Company received the shipments herein described and paid the rate herein found unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable; and that it is entitled to an award of reparation in the sum of \$10.35, with interest from November 22, 1910. We further find that the rate for the future on bottle-washing machines from Lynn, Mass., to San Francisco, Cal., should not exceed the first-class rate. An order in accordance with the findings herein announced will be entered.

No. 3945.

GLOBE MILLING COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

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No. 3965.

R. P. KOENIG & COMPANY

v.

SAME.

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*Submitted October 12, 1911. Decided June 3, 1912.*

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1. Complainants seek retroactive effect of an arrangement now in force whereby Watertown, Wis., is placed upon a parity with Minneapolis, Minn., in the milling of rye, when the product moves to eastern destinations. Complaint dismissed.
2. The fact that a carrier has, by a certain rate adjustment as to one commodity, enabled a manufacturer or producer to overcome the natural disadvantages of his location, is not in itself a ground upon which this Commission is justified in establishing a like adjustment as to another commodity.

*George A. Schroeder and H. Mulberger for Globe Milling Company.  
George A. Schroeder and George Koenig for Koenig & Company.  
F. G. Wright and William Ellis for defendant.*

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

These cases are similar in character, were heard together, and will be disposed of in one report. Both complainants are engaged in the manufacture of rye flour and other rye products at Watertown, Wis. They allege that unreasonable and discriminatory charges have been exacted on rye coming from Minneapolis, Minn., milled in transit at Watertown, and the product thereafter shipped to eastern destinations. The petition in case 3945 was filed March 21, 1911, and asks reparation in the sum of \$495.21, and that in case 3965 was filed March 28, 1911, and asks reparation in the sum of \$377.90. Charges on these shipments were properly based on Chicago combination, and as only the charges to Chicago are assailed, the Chicago, Milwaukee & St. Paul Railway Company is the only necessary party defendant.



During the period from March 5, 1909, to December 31, 1910, complainants shipped from Minneapolis, Minn., numerous carloads of rye, which they milled into flour at Watertown, Wis.

The present rate situation is quite satisfactory to complainants, and while they ask that the Commission order its continuance, these cases mainly involve reparation on shipments that were made during the above period.

Most of the shipments moved to points taking New York rates; it will simplify matters and suffice for the purposes of this case if we here regard them all as having moved to New York City. The joint through rate on wheat flour and rye flour from Minneapolis to New York was and is 25 cents per 100 pounds, which divides by allowing the line to Chicago 8.3 cents and the line east thereof 16.7 cents. It will therefore be seen that the Minneapolis millers could purchase their grain in the Minneapolis market, mill it into flour, and lay it down in New York on the 25-cent through rate.

It is claimed that the rye involved in these cases had its origin west of the Mississippi River. On such rye there was and is a rate of  $7\frac{1}{2}$  cents per 100 pounds from Minneapolis to Chicago. There was and still is a proportional or reshipping rate of 16.7 cents per 100 pounds on wheat flour and rye flour from Chicago to New York, which is the same figure as is accepted by lines east of Chicago as their proportion of the joint through rate of 25 cents from Minneapolis to New York. The Chicago millers are thus enabled to purchase their rye in the Minneapolis market, mill it at Chicago, and put the finished product into New York at a total rate of 24.2 cents per 100 pounds, which gives them an advantage of eight-tenths of a cent over the Minneapolis millers.

In connection with the  $7\frac{1}{2}$  cent rate on rye from Minneapolis to Chicago, the milling-in-transit privilege was accorded at Watertown at a charge of 2 cents per 100 pounds prior to September 1, 1909, and at a charge of  $2\frac{1}{2}$  cents per 100 pounds on and after that date. This rate with milling-in-transit charges, in connection with the 16.7-cent proportional or reshipping rate from Chicago to New York, made the total transportation cost for the Watertown millers, from Minneapolis to New York, 26.2 cents per 100 pounds prior to September 1, 1909, and 26.7 cents per 100 pounds on and after that date. On account of the fact that the Minneapolis millers could ship through to New York at a rate of 25 cents, and the Chicago millers at a cost of 24.2 cents per 100 pounds, the Watertown millers were at a disadvantage of 1.2 cents for a part of the time and 1.7 cents for the balance of the time, as compared with the Minneapolis millers, and were also at a disadvantage as compared with the Chicago millers to the extent of the milling-in-transit charges above named. It

appears upon the record that no other interior point on the Chicago, Milwaukee & St. Paul Railway was accorded more favorable rates than Watertown. Milwaukee is recognized as a Chicago rate point on both the inbound and outbound traffic, and what is said herein respecting Chicago may, in general, be said as to Milwaukee.

Although complainants' petitions ask only for equality with Minneapolis, their witnesses at the hearing expressed the opinion that the Watertown millers should be placed on a parity with the Chicago millers, by the elimination of the milling-in-transit charge. It is conceded that very little rye milling is done at Chicago, and that the competition with the mills at that point is hardly worth consideration. Furthermore, the Chicago millers' advantage does not appear to be due to any discrimination on the part of defendant, but as Chicago is a natural breaking point for rates, the millers at that point are able to reap the benefit of the separately established in-and-out rates of the western and eastern lines. We are therefore of the opinion that there is no merit in complainants' contention that Watertown should be placed on a parity with Chicago.

The principal competition which complainants have to meet is at Minneapolis.

The rate on wheat from Minneapolis to Chicago was and is 10 cents per 100 pounds, with free milling-in-transit privilege at Watertown. In addition to this, defendant's tariffs have for a number of years provided that on wheat from Minneapolis, milled-in-transit at Watertown, and the product forwarded to eastern destinations, the rate from Minneapolis would be shrunk 1.7 cents; this having the effect of making a proportional rate from Minneapolis to Chicago of 8.3 cents, which is the same as defendant's proportion of the joint through rate on flour from Minneapolis to New York. As the proportional rate on flour from Chicago to New York is 16.7 cents, the same as the lines east of Chicago receive out of the joint through rate from Minneapolis to New York, the Watertown millers were and are now on a parity with the Minneapolis millers in so far as wheat flour is concerned.

The record shows that for several years complainants made repeated efforts to secure a like equalization on rye flour, and on March 20, 1911, defendant put into effect a tariff providing for the deduction of 1.7 cents on rye flour as well as on wheat flour. This adjustment, which places the Watertown millers upon a parity with the Minneapolis millers as to both commodities, is still in force and seems to be the result of a settled policy of Chicago, Milwaukee & St. Paul Railway Company. Complainants contend that the arrangement should be given retroactive effect so as to cover all shipments which moved within two years prior to the filing of these petitions.



Minneapolis possesses great natural, acquired, and improved advantages for the carrying on of the milling industry, and is favorably situated in point of distance to a large grain-producing region, and is entitled to the benefits arising from its location.

Watertown's disadvantage was due primarily to the fact that it is at a distance from the great Minneapolis grain market, and complainants had to bring this grain from Minneapolis to Watertown for milling, while millers at Minneapolis could buy their grain and mill it at home. Having located at Watertown, complainants must be deemed to have accepted that point with its natural disadvantages. Witness for one of the complainants stated that his company purchased rye at Minneapolis at certain times of the year, and we therefore infer that the Watertown millers sometimes purchased their raw grain at points other than Minneapolis. As to such rye as they could draw from other points they may have had a natural advantage over the Minneapolis millers, and they no doubt would have opposed any rate adjustment that would have deprived them of any natural advantage they may have had over the Minneapolis millers.

As has been said in several previous cases, this Commission does not by fixing rates attempt to overcome advantages which one city may have by reason of its natural or geographical location. Rye flour does not ordinarily take a higher rate than wheat flour, and it is true that in this case defendant equalized the rates on wheat flour and did not on rye flour, but the record does not indicate that complainants were in any wise prejudiced thereby in the sale of their rye flour; and the fact that a carrier has by a certain rate adjustment as to one commodity enabled a manufacturer or producer to overcome the natural disadvantages of his location is not in itself a ground upon which this Commission is justified in establishing a like adjustment as to another commodity.

The fact that defendant subsequent to the movement of these shipments reduced its rate, by providing for the above deduction, is in this case of little value in determining the reasonableness of the rates charged, and there are no facts of record tending to show that the charges exacted for the milling-in-transit privilege were excessive in view of the services rendered.

Upon consideration of all the facts disclosed by the record it is the conclusion of the Commission that the charges collected by defendant on these shipments were not unreasonable or unjustly discriminatory. The complaints therefore must be dismissed, and it will be so ordered.

No. 4303.  
DEMING LUMBER COMPANY  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted March 19, 1912. Decided June 6, 1912.*

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Rate of 34 cents per 100 pounds for the transportation of pine lumber in carloads from points in Louisiana and eastern Texas to Deming, N. Mex., found unreasonable to the extent that it exceeds 29 cents.

*Rufus B. Daniel* for complainant.

*J. R. Christian* for Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Houston East & West Texas Railway Company; Houston & Shreveport Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Kansas City Southern Railway Company; and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Deming, N. Mex. By petition, filed August 9, 1911, it alleges that an unjust and unreasonable rate was charged on certain carload shipments of pine lumber from points in Louisiana and eastern Texas to Deming. Reparation is sought.

Between May, 1911, and January, 1912, complainant received at Deming 17 carloads of lumber which originated at Walla, De Ridder, Lake Charles, Bon Ami, and Oakhill, La., and Orange, Hayward, and Humble, Tex. Prior to March 9, 1911, the rate on pine lumber from and to the points in question was 29 cents per 100 pounds, but since that date the rate has been 34 cents, and charges on the shipments referred to were assessed on the basis of the advanced rate. The shipments moved via the lines of the Southern Pacific Company from El Paso, Tex., to destination, a distance of 88 miles, which is the short line between El Paso and Deming. The Atchison, Topeka & Santa Fe also operates a line from El Paso to Deming, which involves a haul of about 130 miles. The rate to Deming via the Santa Fe is the same as via the Southern Pacific, but intermediate points on the Santa Fe are held to a higher basis than Deming. Defendants state that the rate to Deming was advanced from 29 to 34



cents, in order that the Santa Fe in meeting the rate of the short line to Deming might not encounter certain complications that arose under the fourth section of the act, in connection with the application of the 29-cent rate over its line. Rates from the producing points in question to points in New Mexico are made and divided on the basis of a proportional rate of 18 cents to El Paso, and it appears that the increase of 5 cents in the rate accrues entirely to the Southern Pacific for its haul from El Paso to Deming, so that its proportion is increased from 11 cents to 16 cents, or over 45 per cent. Such an increase in rate as is here involved can not be justified on the ground urged by defendants; the advance took effect subsequent to January 1, 1910, and we think that defendants have failed to sustain the burden of proof cast upon them by the act.

Upon consideration of all the facts of record we are of the opinion and find that the rate of 34 cents is unreasonable to the extent that it exceeds 29 cents per 100 pounds, and defendants will be required to maintain for the future a rate not in excess of that amount.

The record shows that charges paid by complainant were deducted from the shipper's invoice. Under those circumstances complainant did not pay the charges herein found unreasonable, and is therefore not entitled to reparation. An order will be entered in accordance with the conclusions herein announced.

24 I. C. C.

No. 3995.  
VIRGINIA-CAROLINA CHEMICAL COMPANY  
v.  
SOUTHERN RAILWAY COMPANY ET AL.

*Submitted January 5, 1912. Decided June 3, 1912.*

Charges for the transportation of acid phosphate from Charleston, S. C., to Durham, N. C., were correctly assessed. Complaint dismissed.

*H. W. B. Glover* for complainant.

*C. B. Northrop* for Southern Railway Company.

*M. P. Callaway* for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in manufacturing fertilizer with offices at Atlanta, Ga. By petitions, filed April 5, 1911, it is alleged that charges assessed by the defendants for the transportation of certain carload shipments of acid phosphate from Charleston, S. C., to Durham, N. C., were unreasonable. Reparation is asked.

During the period from April 10, 1910, to July 25, 1910, the complainant shipped via the defendants' lines from Charleston to Durham 92 carloads of acid phosphate, upon which freight charges were based on a rate of \$3.40 per ton of 2,000 pounds. It is the complainant's contention that charges should have been based on a rate of \$1.75 per ton.

Effective March 7, 1910, the defendants established in agent Hinton's tariff a rate of \$3.40 per ton on fertilizer in carloads from Charleston to Durham. This tariff is governed by the southern classification, in which acid phosphate is shown under the heading of fertilizers. This tariff and classification were in force at time of movements in question. In agent Hinton's tariff above referred to the defendants also published a rate of \$1.75 per ton of 2,000 pounds from Charleston to Durham on "phosphate rock and acidulated rock" in carloads, minimum weight 10 per cent less than marked capacity



of car. This rate remained in effect from March 7, 1910, to September 21, 1910, upon which date a supplement to this tariff was published reading:

Rates on acidulated rock published on page 3 of tariff from Charleston, S. C., to \* \* \* Durham, N. C., \* \* \* are canceled; class rates will apply.

Acid phosphate consists of finely ground phosphate rock, treated with sulphuric acid, and the terms "acid phosphate" and "acidulated rock" are used interchangeably.

The complainant contends that as there were two rates in effect, one of \$3.40, provided for acid phosphate, and the other of \$1.75, provided for acidulated rock, the lower rate should govern.

The shipments in controversy were tendered to defendants accompanied by complainant's printed form of bill of lading, in which the commodity shipped is described by complainant as "a. phos.," "acid phos.," "a. p.," or some other abbreviation for acid phosphate. It also appears that the rate of \$3.40 was inserted in the bills of lading by the complainant. Prior to the publication of Agent Hinton's tariff the defendants had no published rate on "acidulated rock" between Charleston and Durham, but did publish a rate of \$3.40 per ton for the transportation of acid phosphate and a rate of \$1.75 per ton of 2,000 pounds on "phosphate rock, crude or ground, not treated with acid or manipulated," the rate on "acidulated rock" being presumably provided for under the rate of \$3.40 on "acid phosphate."

The defendants do not deny that acidulated rock and acid phosphate are synonymous terms, but resist the complainant's claim on the ground that the publication of the rate on "acidulated rock" was due to an error in agent Hinton's office, which was corrected upon its discovery, after it had been in effect but a few months, by eliminating "acidulated rock" from the tariff. The defendants also argue that, the shipments being tendered as "acid phosphate," the rate provided for "acid phosphate" was properly collected and should not now be scaled down to the rate provided for "acidulated rock," which was published in error. The reasonableness of the rate charged is not in controversy, the only question presented for decision being the rate lawfully applicable to the shipments in question.

"Acidulated rock" appears in the index of commodities in the first part of the tariff, and reference is given to the page where the rate will be found. Complainant billed shipments as "acid phosphate," and at the rate provided in the tariff for "acid phosphate." Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the rate lawfully applicable to the shipments in question was \$3.40 per ton of 2,000 pounds provided for acid phosphate. It follows that the complaint must be dismissed, and it will be so ordered.

No. 4062.

MEMPHIS FREIGHT BUREAU ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

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*Submitted January 26, 1912. Decided June 3, 1912.*

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Complaint attacks as unreasonable a six months' limit in connection with the milling-in-transit of logs, etc., at Memphis, Tenn.; *Held*, That as the privilege is conditioned upon the use to which the commodity is put, it should not be sanctioned by an award of reparation. Complaint dismissed.

*James S. Davant* for complainants.

*Sam P. Walker* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complaint is filed by the Memphis Freight Bureau, a voluntary association composed of merchants, manufacturers, and shippers located at Memphis, Tenn., on behalf of certain of its members that are engaged in the manufacture of lumber and similar commodities. By petition, filed May 1, 1911, it alleges that the six months' limitation enforced by defendant in connection with the milling-in-transit of logs, bolts, etc., at Memphis, was unreasonable because sufficient time was not allowed for seasoning, manufacture, and reshipment, thereby subjecting shippers to the payment of full local rates into and out of that place. Reparation is sought.

The traffic involved had its origin on the lines of defendant in Mississippi and Arkansas, and moved between May, 1909, and September, 1910. The shipments of May Brothers and Ryan-Stimson Lumber Company consisted of logs in and lumber out, and complaint is based upon the supposition that a milling-in-transit arrangement covering such traffic was provided for in item 48-B of supplement 29 to defendant's tariff, I. C. C. No. 5585. Upon investigation, however, we find that said item was canceled by item 48-C of supplement 33 to same tariff, effective March 31, 1908, leaving no authority for any transit privilege on these two commodities. Consequently no issue is presented in so far as these parties are concerned.

The shipments of The Weis & Lesh Manufacturing Company consisted of bolts in and spokes out, and the tariff in force when shipments were made provided a transit privilege applicable thereon, which contemplated the use of local rates when the traffic moved into



Memphis, and a subsequent refund on the basis of so-called net rates into Memphis, upon submission of proof that the products of the inbound material moved out via defendant's line. The tariff provision referred to reads in part as follows:

On logs and rough staves, rough bolts and hickory billets, c. l., to be used in the manufacture of telephone and telegraph pins and brackets; staves, spokes, heading, and similar articles in carloads, also vehicle material, in the rough or in the white, c. l., and l. c. l., and handles, c. l., and l. c. l.

It will be noted that this does not cover lumber. The tariff provides further as follows:

Refund will be made on 3 pounds of rough material for each pound of product reshipped, except that on hickory logs, bolts, and billets refund will be made on 5 pounds of rough material for each pound of product reshipped.

The record, however, does not show whether the shipments consisted of hickory or some other wood. Prior to January 12, 1909, no time limit for the outbound shipment of the product was prescribed, but after that date and during the period of movement of the shipments in question the tariff carried a provision to the effect that no inbound freight bills would be honored after six months from the date shipment left point of origin. Since September 10, 1910, no transit privilege has been accorded, and full local rates into Memphis have applied. These local rates are lower than the locals formerly in force, and are equal to or lower than the so-called net rates that were applied under the six-months transit arrangement.

While upon the record it is clear that from eight months to a year is required for seasoning, manufacture, and reshipment, it is not claimed that a transit privilege of the kind herein involved is a commercial necessity. It will be noted that the arrangement did not contemplate the application of a joint through rate from point of origin to final destination, but merely allowed a refund on the basis of a lower inbound rate when the logs were manufactured into certain specified articles. The same local rates applied on logs as on bolts, and as no refund was permitted when the logs were used in the manufacture of lumber, the tariff had the effect of naming a rate conditioned upon the use to which the commodity was put, a principle to which we have previously refused to subscribe, and which we here disapprove.

Upon consideration of all the facts of record, we are not of the opinion that reparation should be awarded, and the petition will therefore be dismissed.

At the hearing it was sought to amend the complaint so as to include similar claims covering shipments of The Florence Pump Company and Nickey & Sons Company, but in view of the conclusions reached no action in respect thereto is necessary. An order will be entered accordingly.

No. 3813.

KELLOGG TOASTED CORN FLAKE COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

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FOURTH SECTION APPLICATION NO. 2045.

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*Submitted May 1, 1912. Decided June 5, 1912.*

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Rate of 27 cents per 100 pounds for the transportation of sugar from New Orleans, La., to Battle Creek, Mich., not found unreasonable, but found to be discriminatory in so far as it is violative of the long-and-short-haul clause of the fourth section of the act, as amended June 18, 1910. Compliance with the fourth section of the act required. Reparation denied.

*Eugene Wallace* for complainant.

*D. P. Connell* for Michigan Central Railroad Company.

*R. Walton Moore* for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation located at Battle Creek, Mich., engaged in the manufacture of a cereal product breakfast food. By petition, filed January 31, 1911, it alleges that defendants' rate of 27 cents per 100 pounds for the transportation of sugar during the period from March 14, 1910, to July 26, 1911, from New Orleans, La., to Battle Creek, Mich., was unreasonable and discriminatory and in contravention of the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910. Reparation is asked.

Between March 14, 1910, and July 26, 1910, complainant shipped 15 carloads of sugar, of a total weight of 580,207 pounds, from New Orleans, La., to Battle Creek, Mich. Freight charges were collected in the total sum of \$1,558.75.

It is asserted in the petition that the rate on the same commodity from New Orleans, La., to Detroit, Mich., was 23 cents per 100 pounds and that complainant was charged on these shipments an unreasonable excess of 4 cents per 100 pounds, the difference between the rate to Battle Creek and that to Detroit.



Prior to November 27, 1909, there were no departures from the fourth section in the rates on sugar from New Orleans, La., to points in central freight association territory. The territory of destination was grouped and a rate of 27 cents per 100 pounds was published to all points north of the south boundary of the state of Michigan and south of a line passing easterly and westerly across the state, immediately north of Detroit, Ypsilanti, Jackson, Battle Creek, and Kalamazoo. To the territory lying on the south of the south boundary of the state of Michigan a rate of 24 cents per 100 pounds was in effect.

Effective November 27, 1909, a rate of 23 cents per 100 pounds was established on this commodity from New Orleans, La., to Detroit, Mich., Cleveland and Toledo, Ohio. All the railroads serving these three points are obliged to pass through a higher rated territory in reaching these destinations, and the departure from the provisions of the fourth section has in this manner been brought about.

The rate of 27 cents per 100 pounds to Battle Creek, Mich., from New Orleans, La., applies over a rail haul of approximately 1,037 miles by the short line, an earning of  $5\frac{2}{10}$  mills per ton per mile. The testimony shows that the loading of these cars is about 38,000 pounds, and that the revenue is therefore \$102 per car for this haul. The distance from New York City to Battle Creek, Mich., is approximately 800 miles and the rate is 25 cents per 100 pounds, which would be  $6\frac{1}{4}$  mills per ton per mile. The distance from New Orleans, La., to Dubuque, Iowa, is 1,005 miles and to Davenport, Iowa, it is 923 miles. The rate is 28 cents per 100 pounds to both places. From New Orleans, La., to La Crosse, Wis., the distance is 1,113 miles and the rate is 30 cents per 100 pounds. It would therefore appear that the rate to Battle Creek is not unreasonable as compared with other rates on sugar from New Orleans.

It does not appear that there is competition between complainant at Battle Creek and competitors at Detroit through which complainant has been damaged by reason of this rate. The testimony shows that the rate of 23 cents was established to Detroit in order to bring refined sugar from New Orleans into that market in competition with sugar from the refineries at Philadelphia and New York City. The rates to the intermediate points do not appear to be unreasonable in themselves. They do not appear to be discriminatory within the meaning of the third section, but they are in contravention of the long-and-short-haul clause of the fourth section of the act as amended.

The refineries at New Orleans and the carriers serving that point are seeking to reach a market which geographically is tributary to Philadelphia and to New York. The refiners at New Orleans shrink

their profits and the carriers serving them shrink their rates in order to occupy a market that is more readily served from another source, and the real question is, May this properly be done as to Detroit and corresponding reductions in rates be withheld from Battle Creek?

We are of the opinion, and find, that competition as here shown is not a sufficient justification to warrant authorizing departure from the provisions of the fourth section and that it is unjustly discriminatory against Battle Creek and complainant to charge higher rates on this traffic to Battle Creek than to Detroit, Toledo, or Cleveland.

We do not regard the case as one for reparation, and none will be awarded. An order will be entered in accordance with the conclusions herein expressed.

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No. 4603.

JOHN W. KEOGH

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY.

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*Submitted March 30, 1912. Decided June 6, 1912.*

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Rates for the transportation of excelsior in carloads from St. Paul, Minn., to Chicago, Ill., St. Louis, Mo., Kansas City, Mo., and Omaha, Nebr., found to be unreasonable to the extent that they exceed the rates contemporaneously applied to the transportation of flax tow in carloads from and to said points, and rates for the future prescribed on that basis. Reparation awarded.

*Charles D. Drayton* for complainant.

*R. B. Scott* and *Geo. H. Crosby* for defendant.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

The complainant, doing business as John W. Keogh & Company, is engaged in the manufacture of excelsior and flax tow, with offices at Chicago, Ill., and a plant at St. Paul, Minn. By petition, filed December 29, 1911, he alleges that unreasonable rates were charged him for the transportation of excelsior from St. Paul to Chicago; St. Louis, Mo.; Kansas City, Mo.; and Omaha, Nebr. Reparation is asked.



The rates in cents per 100 pounds applicable to excelsior from St. Paul to the points of destination involved when petition was filed were class-C rates, carloads, minimum weight 20,000 pounds, as follows: Chicago, 17; St. Louis, 18; Kansas City, 23; Omaha, 22. With the exception of the rates to Chicago and Kansas City, which were reduced January 1, 1912, to 13.5 cents and 22 cents, respectively, the above-named rates remain in force. These rates are alleged to be unreasonable in so far as they exceed the rates applicable to the transportation of flax tow from St. Paul to the points named. The rates from St. Paul on flax tow are commodity rates, carloads, minimum weight 30,000 pounds, as follows: Chicago, 10 cents; St. Louis, 12.5 cents; Kansas City, 14 cents; Omaha, 14 cents.

Excelsior is a packing material consisting of long, fine, curled wood shavings, generally cut from poplar, pine, or basswood, and its principal use is in packing merchandise of various kinds, although a considerable amount of the finest grade is used for upholstering. Flax tow of the quality manufactured at St. Paul and other points in that territory is chiefly used in upholstering furniture. It is the long, fine, curled fibers of flax remaining after the straw has been removed.

The mill price of fine and medium grades of excelsior during the past four years has ranged from \$10 to \$14 per ton, and of wood wool, an extra fine grade of excelsior, has never been over \$22. The value of the cheapest grades of upholstering tow during that period has been from \$15 to \$22 per ton at the mill, and the highest grade of tow from \$30 to \$40 per ton. Excelsior and flax tow are baled for shipment and handled in transit the same as hay, the bales weighing from 85 to 110 pounds each. During the season of 1910-1911 on shipments of flax tow from complainant's St. Paul plant, in cars averaging from 39 feet to 40 feet in length, the loadings were from 27,700 pounds to 32,700 pounds, and the loadings of excelsior in cars of practically the same length were from 27,300 pounds to 36,800 pounds. The movement of excelsior from the mills is almost entirely in carload shipments, made to distributing centers, from which points it is shipped in less-than-carload quantities to manufacturers and others requiring it for packing purposes, while straw, waste paper, sawdust, and other commodities with which excelsior competes as packing material are usually shipped comparatively short distances. The volume of traffic in excelsior, complainant testified, is about ten times that of flax tow and in nearly 30 years' experience in handling flax tow and excelsior he knew of only one case of loss or damage to those commodities in transit. Flax tow and excelsior, in carloads, are classified as follows: Official classification: Both commodities are placed in fifth class, with minimum weight 20,000 pounds, subject to rule 27. Southern classification: Excelsior, class D, minimum 20,000 pounds; flax tow, third class, any quantity. Western classification:

Excelsior, class C, minimum 20,000 pounds; flax tow, fourth class, minimum 24,000 pounds.

From a consideration of the evidence before us and the various elements affecting the desirability of the two commodities as traffic, they are analogous in character from a transportation standpoint. No evidence was offered, nor was any sufficient reason advanced by the defendant, to justify the application of the lower rates on flax tow than the rates contemporaneously applied to the transportation of excelsior, a less valuable commodity, in which the volume of traffic is very materially greater and one requiring practically the same transportation service. Upon the record, therefore, we find that the rates charged complainant on shipments of excelsior from St. Paul, Minn., to Chicago, Ill., St. Louis, Mo., Kansas City, Mo., and Omaha, Nebr., were unreasonable to the extent that they exceeded the rates contemporaneously applied to the transportation of flax tow in carloads.

We further find that complainant has been damaged to the extent that he has paid charges at the rates found herein to be unreasonable, and reparation is awarded in favor of complainant on that basis. No proof as to the shipments of excelsior from St. Paul to the points of destination involved on which complainant seeks reparation was offered. A statement setting forth the details as to each of said shipments and which the defendant has had an opportunity to check should be submitted with satisfactory proof that the freight charges were paid by complainant, and upon approval of same by the Commission an order of reparation will be entered.

The defendant will be required for a period of two years to establish and maintain for the transportation of excelsior in carloads from St. Paul to the points in question rates not in excess of the rates contemporaneously applied to the transportation of flax tow in carloads. An order will be issued in accordance with the findings herein announced.



No. 3840.

MEMPHIS GRAIN & HAY ASSOCIATION ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

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No. 3841.

SAME

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted January 20, 1912. Decided June 4, 1912.*

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1. The general transit rules and regulations of the defendants not shown to be arbitrary and unreasonable as alleged by the grain dealers of Memphis. The disadvantages under which Memphis labors found to result largely from the loose rules and practices in force at other and competing grain markets.
2. The defendants required to give Memphis the benefit of reshipping rates such as are in effect from St. Louis and other competing markets reached by the defendants.
3. A mixed feed containing nontransit commodities in excess of 20 per cent of its total weight is not properly to be regarded as a grain product but is a new commodity which is entitled to move from the transit point only on the specific rates in effect from that point.

*C. L. Marsilliot and C. B. Stafford* for complainants.

*G. E. Patteson, J. B. Magee, W. L. Duncan, Isaac T. Rhea, J. O. Lincoln, and L. B. Johnson* for grain interests at Memphis, Cairo, Nashville, St. Louis, and elsewhere.

*Merrel P. Callaway, Fred H. Wood, R. Walton Moore, Charles N. Burch, W. A. Colston, Charles Barham, and R. L. McKellar* for Illinois Central Railroad Company; The Yazoo & Mississippi Valley Railroad Company; The St. Louis & San Francisco Railroad Company; Chicago & Eastern Illinois Railroad Company; Louisville & Nashville Railroad Company; Nashville, Chattanooga & St. Louis Railway Company; and Southern Railway Company.

#### REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

The individual members of the Memphis Grain & Hay Association who are joined herein as complainants draw their grain principally

from west of the Mississippi River and market it and their grain products chiefly in the Mississippi Valley, southeastern rate territory, and in the Carolinas. So far as its rate features are concerned, the complaint relates only to destinations in the Mississippi Valley; but the transit rules and the conditions affecting the mixed-feed traffic to southeastern rate territory and the Carolinas are also involved.

On February 1, 1911, the principal defendants, the St. Louis & San Francisco and the Illinois Central Railroad companies, being the lines over which apparently most of the grain moves into Memphis published a new tariff of rules and regulations, under which the privilege of transit at Memphis was thereafter to be governed. Similar rules were concurrently established at Cairo, Evansville, Paducah, and Henderson, on the Ohio River. The avowed purpose of the new regulations was to carry into effect the rulings of the Commission respecting transit and to enable the defendants properly to police the practice. The shipping interests at Memphis immediately petitioned the Commission to exercise the power, conferred on it by the amendment of June 18, 1910, of suspending the effectiveness of the tariff promulgating the new transit rules. This the Commission declined to do. Two complaints of identical substance were thereupon filed, attacking the new transit regulations, one being directed against the Frisco and its connections and the other against the Illinois Central and connecting lines. The allegation is that the rules are unreasonable and place an undue burden and expense on the shippers; it is also alleged that if they are strictly enforced according to their letter the privilege of transit will be destroyed. It is charged, and this is the principal ground of complaint, that the rules result in an undue discrimination against Memphis in favor of other markets or gateways, notably Chicago, St. Louis, Omaha, and Kansas City, where transit practices and regulations are less stringent in their terms and there is greater liberality in their enforcement.

We must therefore consider the legality and reasonableness of the transit regulations and practices at Memphis, and also whether there is any discrimination against that market resulting from the difference in the provisions under which the transit privilege is granted at other points.

#### THE TRANSIT RULES.

There are five provisions in the regulations of the defendants at Memphis against which the complaint is more particularly directed.

(a) Rule 7-b of the Illinois Central requires a daily report by millers and reshippers of grain to the resident inspector on a form prescribed by the inspection bureau of the carriers. Without describing these reports in detail it will suffice to say that shippers are required to state minutely, with a certificate of the correctness of the report,



the particulars of the business done in each kind of grain on the day of the report. A separate report is made for each grain, one for wheat and its products, another for corn and its products, etc., so that shippers who deal in various grains have to make in some cases as many as eight or nine reports each day.

It is urged that the rule imposes an unnecessary and unreasonable burden on the shippers, and that much of the information required on the reports appears on the records of the carriers themselves. It is further asserted that the reports are of no real use to the carriers in the policing of transit, because it is physically impossible for an inspector to make any effective check of them.

On the other hand, the carriers claim, and with much force, that it is useful in more ways than one to have written reports from the shippers themselves, showing the receipts of grain from various sources, and the disposition made of the grain or its products. One thing further that should be mentioned in connection with this rule is the requirement that the miller or grain shipper shall estimate and report daily his loss by shrinkage or otherwise. This it is, of course, difficult to do with entire accuracy.

(b) Rule 7-c provides for the verification at frequent intervals of the transit records kept by the shippers, and further provides, as a penalty for violation of the rules, that the entire transit billing on any given character of grain, as, for example, hard wheat, shall be canceled and the right to transit thereon forfeited in case the shipper is found to have on hand inbound billing in excess of 5 per cent over the quantity of grain actually on hand, a variation of 5 per cent between the records and the stock of grain being prima facie evidence of a violation of the rules. A similar, rule providing the same penalty, is in effect at the Ohio River crossings but not at other markets or gateways. It is said therefore to result in a discrimination against the complainants, and they ask that the penalty be abolished. It is asserted that in spite of all the reasonable care and precaution a shipper may exercise in an honest attempt to comply with the rule, errors may readily occur whereby the shipper will forfeit a valuable transit right on a substantial quantity of grain actually on hand and which has actually moved in under the transit privilege. In other words, the complaint is that the rule is not a practical regulation; that it can not fairly be enforced in accordance with its letter; and that it punishes alike the honest shipper who may make an unintentional error and the dishonest shipper who is manipulating his accounts.

(c) Rule 34 provides that when grain is subjected to any process, as, for example, clipping, resulting in the loss of weight, only the weight remaining shall be entitled to reshipping privileges; that a

deduction shall be made on each expense bill for the loss in weight as the result of such process; and that a certificate of said loss shall be given by the shipper with each expense bill surrendered.

The objection urged against this rule is that it requires the shipper to estimate his loss on each carload that is subjected to any such process. This can not be an accurate estimate and is necessarily little more than a guess, because the loss varies on different carloads of the same character of grain coming from different sources and mingled in the warehouse. The suggestion is made that the loss resulting from such process can be ascertained periodically with reasonable accuracy, and when so ascertained expense bills may be canceled accordingly. Our understanding is that the practice at Chicago is to cancel at the end of each month billing representing the invisible loss during the month, determined as accurately as possible without weighing.

(d) Another rule that is strongly attacked prescribes the ratio of the principal product of the grain and the by-products or offal that may be shipped outbound. That is to say, under the present rules at Memphis and the Ohio River, the precise proportions are fixed for each of the products of a particular grain shipped out at the balance of the through rates, whereas at the other milling points the rules at best go no further than to fix the total proportion of products that may be shipped outbound. In other words the Memphis miller may ship out flour not exceeding 69 per cent of the weight of his inbound wheat, and not more than  $29\frac{1}{2}$  per cent offal, a total of  $98\frac{1}{2}$  per cent; the rules at other points simply provide that the aggregate amount of flour and offal shall not exceed say  $98\frac{1}{2}$  per cent of the quantity of wheat moving in, and do not fix the proportion between the principal product and the by-products. The Memphis rule is complained of as arbitrary, and as therefore subjecting the millers to a loss of transit tonnage.

While it may be true that the operation of the rule at Memphis is fairly consistent with average results, we find that its application there, while a different rule is maintained by the defendants elsewhere, subjects Memphis to an undue discrimination.

(e) The life of expense bills for transit purposes is limited at Memphis, and at Cairo and other Ohio River crossings, to six months. Other markets are allowed the privilege of shipping out grain or the products of grain within 9 months or 12 months, after the inbound grain movements. The result is a discrimination which the complainants regard as unjust, and for which the defendants do not assert any justification. We understand in fact that they admit the impropriety of restricting the transit privilege at Memphis to a period of six months, while at the same time extending it at competing markets for a longer period, and we shall look to the defendants to correct this discrimination promptly.



## THE TRANSIT INVESTIGATION.

The practices of carriers throughout the country with respect to various transit privileges on grain and its products as well as other commodities have been under examination by the Commission in an extended and comprehensive way. The record made on that investigation, as described in our report therein, *The Transit case*, 24 I. C. C., 340, verifies the conclusion to be gained from the record in these cases, namely, that the rules in effect at Memphis are reasonably strict and the practices under them free from serious objection under the law. At Chicago, St. Louis, and other markets on the other hand the rules are not so definite and complete, nor are they so strictly enforced as at Memphis. It results that Memphis is under a disadvantage as compared to grain dealers elsewhere. Our conclusion, however, is that the rules at Memphis complained of herein are not unreasonable and do not impose an undue burden upon shippers or result in unreasonable transportation charges. On the contrary the carriers have there adopted reasonable safeguards that enable them fairly to protect the integrity of their rates and prevent unlawful results to shippers. The disadvantage under which Memphis labors is largely the result of the liberality of practice at other points rather than of any undue severity of conditions at Memphis; and the carriers in conformity with the conclusions announced in the report in our general investigation, will doubtless amend their practices elsewhere and thus remove all reasonable cause for complaint at Memphis.

## THE RATES.

The trouble with the rate adjustment on grain and grain products so far as Memphis is concerned is confined to destinations in the Mississippi Valley, and to state the matter in a word, arises out of the refusal of the Illinois Central and the Frisco to open their lines to grain brought into Memphis by their competitors. In other words, Memphis, at points on or reached over the Illinois Central in the Mississippi Valley, is able to deliver on a parity with competing markets grain that has moved into Memphis over the Illinois Central; but it is unable to do this with grain that has moved into Memphis over the Iron Mountain or Frisco. On the other hand, grain moving into Memphis over the Illinois Central can not be sold by the Memphis dealer at a station on the Frisco or Southern Railway, for example, in the state of Mississippi. Memphis is under no such disability in the marketing of grain and grain products in southeastern rate territory, where it is on a parity with or has an advantage over competing markets. The Mississippi Valley geographically ought to be regarded as territory tributary to Memphis, rather than to St. Louis, Kansas City, or other markets, and it is not clear what justification there can

be for putting Memphis under a rate disadvantage in that territory. To remedy the situation so far as the marketing of the grain itself is concerned the complainants make the following demands:

(a) A reduction from 7 cents per 100 pounds to 6 cents per 100 pounds in the rate on grain from St. Louis to Memphis.

(b) The establishment of reshipping rates from Memphis to New Orleans and destinations in the Mississippi Valley, such reshipping rates to be uniformly 6 cents less than the rates in effect from St. Louis.

It is readily apparent that with the granting of the prayer of the complaint in this regard Memphis would be placed upon a rate equality with St. Louis in the Mississippi Valley. The complainants make much of the fact that reshipping rates of the character which they seek are now available at Kansas City and St. Louis and have received the approval of the Commission. The objection of the principal defendants to the proposed adjustment is based largely on the fact that it would open their lines out of Memphis to grain that had moved into Memphis over the lines of their competitors. In other words, their desire is to retain their own local markets in the Mississippi Valley for grain moving through Memphis over their own rails. Moreover, the defendants point out that the establishment of the proposed reshipping rates would cut the present through rates from a large number of originating points in fields reached by various grain-carrying lines serving Memphis; that the result would be a serious disturbance of the delicate adjustment involving rates that are low and in some cases extremely low; and that the establishment of reshipping rates would involve a radical revision of the divisions accruing to the various lines under the present rates.

It may be well to state that our understanding is that to destinations in southeastern territory the rates out of Memphis are generally adjusted on a level of 6 cents under the rates obtaining to the same destinations from St. Louis. That is to say, the rates on grain to the southeast break on Memphis, the rates east of that point being 6 cents less than from St. Louis. The complainants have proposed, after elaborate study, an adjustment of proportional or reshipping rates that will accomplish what is desired by the Memphis grain dealers, and ask that it be ordered into effect. This adjustment, as heretofore stated, involves a reduction of the proportional rate from St. Louis to Memphis from 7 cents to 6 cents per 100 pounds and the establishment of reshipping rates from Memphis to destinations in the Mississippi Valley uniformly 6 cents less than the present rates from St. Louis.

As regards the milling interests of Memphis, however, the complainants do not wish the abolishment of the transit privilege, as is



proposed in the case of the rehandling of the grain itself, but desire the retention of the privilege under modified and less burdensome regulations. It is not altogether clear why one method should be necessary to effect proper rate results with respect to their movements of grain, and another is advisable with respect to movements of grain manufactured into flour or other products at Memphis. There are instances in this territory where the rates on the product exceed the rates on the grain, and this is referred to by counsel for the defendants as one explanation for the desire of the complainants to retain the milling-in-transit privilege.

As a part of this phase of the case the question is presented whether the Illinois Central and the Frisco shall be required, by the establishment or revision of joint through rates or otherwise, to join with their connections in an adjustment of rates on grain and grain products that will short-haul themselves and enable a dealer at Memphis to sell in territory tributary to the Illinois Central or the Frisco grain that has moved into Memphis over the rails of competing lines.

In several cases the Commission has pointed out that the lines of interstate carriers are public highways, the use of which can not be restricted by railroad companies in their own interests regardless of the rights of shippers. The carrier on the one hand is entitled to reasonable compensation and the shipper on the other hand to a reasonable rate for the service performed. It is beyond the lawful right of a carrier to determine what traffic it will take into Memphis and what traffic it will take out of Memphis. It must perform either service at the request of the shipper and for a reasonable charge. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C., 460, 466; *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 460, 464. We recognize the right of the Illinois Central so to adjust its rates as to preserve to its own line the long haul on traffic from the originating territory reached by its rails, but only so far as this may be done without trespassing upon the rights of shippers. The tendency however of the tariff restrictions of that company in force at Memphis is to exclude from points of consumption on its lines in the Mississippi Valley grain that has originated in certain territory, while grain originating in certain other territory on which it has a longer haul may reach such points through Memphis. The products of grain are affected by the same restrictions; and the tariffs of the Frisco are so adjusted as to produce substantially similar results. The record shows that grain from certain originating territory, instead of taking available direct routes through Memphis to points on the Illinois Central and Frisco in the Mississippi Valley, actually is moved over circuitous out-of-line routes to St. Louis and other points, and thence to Memphis, in order that those lines may get the long haul.

We think that Memphis is entitled to the benefit of reshipping rates and that it is at a disadvantage, as compared with St. Louis and other markets having reshipping rates, so long as it is deprived of the same privilege. We shall look to the defendants to propose a revised basis of rates to give effect to these conclusions. They must be so adjusted as to permit the free movement of grain into Memphis from the producing territory referred to and thence to destinations on the Illinois Central and the Frisco and their connections.

#### MIXED FEED.

The manufacture of mixed feed for poultry and animals is an important industry at Memphis, which is vitally affected by the new transit rules. Such feeds are composed not only of transit ingredients, such as the products of wheat, corn, etc., that have moved in under transit rates, but also of nontransit ingredients, such as salt, cottonseed meal, sunflower seed, grit, etc., which are commodities that are not ordinarily accorded transit rates, even though they move into transit markets by rail. Some mixed feeds contain as much as 50 per cent and more of nontransit articles. Others have only a small percentage of such ingredients. Under the previous practice at Memphis the inclusion of salt, sunflower seed, and other such ingredients was ignored and the feed was treated as if made up wholly of the products of inbound grains; it was given on the whole outbound weight the benefit of the balance of the through rates, such transit being allowed upon the surrender of inbound billing for the same weight of wheat, corn, etc. Under the rules in force at the time of the hearing mixed feeds containing such nontransit ingredients were denied the benefit of transit rates, even on the weight or supposed proportion of transit ingredients that they contain. On such shipments the flat local rate from Memphis to destination was assessed.

The manufacturers of mixed feed at Memphis complain that these transit rules of the defendants discriminate in favor of their competitors at other points, who under conditions that are generally similar are allowed transit rates or the equivalent of transit rates on their outbound shipments. The general situation may be illustrated by describing the conditions existing at St. Louis. There is available to the manufacturer there a line of so-called reshipping rates which are substantially lower than the local rates and which are applicable upon a mere certificate that the mixed feed is manufactured from materials that have come from beyond. This gives to St. Louis a substantial advantage in entering the markets for feed in the Mississippi Valley. The defendants recognize this, and on the argument we were advised that it was their purpose, and this has since been done, to put in effect at Memphis a rule permitting the transit portion



of shipments of mixed feed to be billed out at the balance of the through rates and the nontransit portion at the local less-than-carload rates. That is the rule now in force at Cedar Rapids and which has been in force there for some time. It materially helps the situation, but still leaves the Memphis manufacturer at a disadvantage in those markets when compared with his competitors at St. Louis.

Although the new rule at Memphis is substantially the same as the rule at Cedar Rapids, Memphis apparently is at a disadvantage compared with that point because the transit rules heretofore described are more strict and are more closely enforced at Memphis than are the regulations at Cedar Rapids. The lack of strict policing at Cedar Rapids gives an opportunity for manipulation at that point that does not exist at Memphis. To relieve Memphis of these disadvantages the complainants desire the establishment of flat or proportional rates from Memphis applicable on their mixed feeds to destinations in the Mississippi Valley and southeastern territory. In other words, what Memphis asks is reshipping rates on mixed feed similar to the rates enjoyed by its competitors at St. Louis.

We see no reason why manufacturers of mixed feeds at that point should not enjoy the same privileges under similar rate adjustments as their competitors at St. Louis, and we shall expect the defendants promptly to establish reshipping rates or otherwise so to adjust their tariffs as to give Memphis an equal opportunity with St. Louis to get into the markets in question.

The practice of carriers in applying transit privileges to mixed feeds without any limitation as to the character of the ingredients of the mixture has been carried entirely too far and produces unlawful results. There must be an immediate readjustment of their tariff rules in that connection. In our view, and we so hold, any mixed feed that contains nontransit commodities in excess of 20 per cent of its total weight is not properly to be considered a grain product. It is a new commodity, which is entitled to move from the transit point only on the specific rates from that point.

No order will be entered to give effect to these conclusions until that shall appear to be necessary.

24 I. C. C.

No. 4171.  
COLORADO COAL TRAFFIC ASSOCIATION  
v.  
COLORADO & SOUTHERN RAILWAY COMPANY.

*Submitted March 6, 1912. Decided June 3, 1912.*

Complainant alleges that defendant's refusal to transport coal for shipment to interstate points when loaded and tendered in defendant's own cars subjects the producers to discrimination and undue prejudice. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, cited and followed.

*C. W. Durbin* and *Albert L. Vogl* for complainant.

*J. M. Cates* and *E. E. Whitted* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Colorado Coal Traffic Association of Denver, Colo., a voluntary association of corporations and individuals, brings this proceeding on behalf of certain of its members engaged in mining and shipping coal from mines in the southern portion of Colorado.

On or about October 20, 1910, the defendant issued and distributed a circular among the coal producers in this territory, the provisions of which, so far as the same are involved in this case, are as follows:

Car Service Circular No. 7 (superseding Circular No. 6, dated July 1, 1910).

DENVER, COLO., Oct. 20, 1910.

*To all concerned:*

Effective this date the following general instructions will be observed in handling system equipment and refrigerator cars. These may be superseded at any time by special instructions from this office. \* \* \* Coal cars must not be loaded off the line except to points on the C. & W. at Minnequa, C. S. & C. C. D., and F. W. & D. C.

This circular was not filed with the Commission.

The complainant contends that this rule subjects the shippers of coal to undue prejudice and unjust discrimination, and that such a regulation is unreasonable. The complaint specifies cars which, though loaded and consigned to interstate points beyond the territory prescribed in the said circular, were refused billing and transportation by the defendant. It was averred that such refusal



resulted in loss to the shippers; and further, that the defendant did not adhere strictly to its said circular, but allowed shippers from some of the mines to use its cars for traffic to points off its line. Complainant asks that the defendant be required to execute bills of lading and, when requested, to transport cars of coal to all points to which it has established through routes and joint rates.

Defendant contended that, under the law, it is fully authorized, when the circumstances warrant it, to enforce reasonably restrictive rules in order that it may control its equipment and allot the same to shippers after a plan that will best subserve the public interest; and it further contended that the measures adopted provided the shippers with more equipment than they would have had if no such restrictions had been placed upon the movement of the system cars.

During a period of car shortage in the fall of 1910, the defendant, in accordance with its custom under such circumstances, mailed notices to the producers of coal, the substance and effect of which were embodied in the circular above referred to. As a result of this, some of the cars that were loaded but not billed by the shippers in accordance with the rule prescribed in said circular were refused transportation, whereupon the destinations of the shipments were changed and the same were after some delay forwarded to other consignees. With respect to the provision of the rule that its requirements might be waived under special circumstances, the testimony shows that this feature of the circular was frequently relaxed in favor of the complaining shippers as well as others.

While it was conceded that no particular discrimination existed with respect to the distribution of defendant's cars, this case presents facts substantially similar to those which were considered in the case of *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39. The principles announced therein apply with equal force to the case now before us and control the disposition thereof. The Commission will make no order in this case at this time, relying upon the carriers to make such regulations for car interchange and for the maintenance of the through routes involved as may be required by law.

H. LESINSKY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted May 8, 1909. Decided June 3, 1912.*

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Rate of \$1.46 per 100 pounds on cheese in carloads from Plymouth, Wis., to El Paso, Tex., not found to have been unreasonable. Complaint dismissed.

*Rufus B. Daniel* for complainant.

*A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a wholesale grocery dealer in El Paso, Tex. Its petition, filed December 30, 1908, alleges, in substance: (1) That it was charged an unreasonable rate for the transportation of a carload of cheese shipped on or about July 26, 1907, from Plymouth, Wis., to El Paso, Tex.; (2) that the rates on cheese from the Fox River territory in Wisconsin to points west of El Paso are such as to preclude the shipping of cheese to El Paso in carload lots and reshipping it to points west in less-than-carload lots; and (3) that defendants' rate on cheese from Plymouth to El Paso is in violation of section 4 of the act, because it is higher than the rate from Plymouth through El Paso to Ciudad Juarez, Mexico. Reparation is asked.

The rate charged upon the shipment mentioned in the complaint was \$1.46 per 100 pounds.

The contention that this rate was unreasonable appears to be based almost wholly upon the fact that there was a lower rate to Ciudad Juarez, a city in Mexico across the Rio Grande River from El Paso. The defendants' evidence indicated that their reason for maintaining a rate of \$1.38 from Plymouth to Ciudad Juarez, as compared with the rate of \$1.46 to El Paso, was due to competitive conditions. A large quantity of cheese is produced in New York state. The testimony showed that the rail-and-water rate on cheese from New York, N. Y., via Vera Cruz, Mexico, to Ciudad Juarez was 99 cents per 100 pounds, and that the existence of this rail-and-water rate, over which neither the defendants nor the Commission has any control, forced the publication of a lower rate from Plymouth to Ciudad Juarez than to El Paso. Upon the facts as stated we find that the conditions existing with respect to the transportation from Plymouth to El Paso and Ciudad Juarez were substantially dissimilar, and that the



existence of a rate to the latter point lower than that to the former was not in violation of section 4 of the act as it existed prior to June 18, 1910. Since the hearing the rates have been so adjusted that there is now no violation of the fourth section.

A considerable portion of the testimony offered by complainant related to the imposition of icing charges in connection with the transportation of cheese in carload lots. The petition contains no allegation respecting the icing charges, and therefore it is not a proper subject for consideration in this report.

Respecting the allegation that the cheese rates from Wisconsin points to points west of El Paso are unfavorable to the dealer at El Paso, the evidence is meager; but a comparison of the rate to El Paso with the rates to other points of substantially similar distance from the Fox River territory shows that the rate to El Paso is less than the average rates on cheese for similar distances. There is nothing in the record which indicates that the rate attacked is unreasonable. It follows that the complaint must be dismissed, and it will be so ordered.

24 I. C. C.

No. 3249.  
LATHROP, SHEA, HENWOOD COMPANY  
*v.*  
LEHIGH VALLEY RAILROAD COMPANY ET AL.

*Submitted October 10, 1910. Decided June 6, 1912.*

While carriers have no right to disregard routing instructions contained in bills of lading accepted by them, reparation should not be awarded in a case where the misrouting is not the cause of damage. Complaint dismissed.

*Charles Conradis* for complainant.

*E. H. Boles* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in general contracting work, and has its principal place of business at Scranton, Pa. By petition, filed April 23, 1910, it alleges that certain carload shipments of cement moving from Egypt, Pa., to Campbell Hall, N. Y., during April and May, 1908, were misrouted by the principal defendant, whereby complainant was damaged to the extent of \$358.10, for which amount reparation is asked.

The Erie & Jersey Railroad Company, whose stock is owned by the Erie Railroad Company, engaged complainant to do some construction work at Campbell Hall, N. Y. Under the terms of the contract for the work to be performed, shipments of construction material, consigned to complainant at Campbell Hall, were to be pre-paid at full local rate to Bergen Junction, N. J., a junction of the Erie Railroad. Thence to destination they were to be charged at the Erie Railroad's local rates, but the Erie & Jersey Railroad was to ultimately assume all freight charges paid by complainant in excess of 3 mills per ton per mile, or approximately 19 cents per ton for the transportation over the line of the Erie Railroad. It was further provided that on shipments from connecting lines delivered to the Erie Railroad on through rates, with charges of connecting lines following as advances, the Erie Railroad's full proportion of such through rate should be paid and assumed by complainant.



The shipments were delivered to the Lehigh Valley Railroad with specific instructions to route via that line and its connections to Bergen Junction, and thence via the Erie Railroad to destination. However, the Lehigh Valley road did not follow those instructions, but forwarded the shipments to destination via Easton, Pa., Greycourt, N. Y., and the Erie Railroad, on a joint through rate of \$1.75 per ton. The local rate from Egypt to Bergen Junction was 80 cents per ton, and had the shipments moved as routed by shipper, and been prepaid to Bergen Junction, the ultimate transportation cost to complainant would have been approximately 99 cents per ton. Complainant therefore claims damages to the extent of the difference between the amount it did pay at the \$1.75 through rate and the amount it would have paid had the shipments been handled as directed and as contemplated by the contract.

At the hearing, the movement of the cement between the points named, the main facts with regard to this alleged misrouting, and the charges actually paid, were conceded. The testimony as to what preceded the misrouting, however, is conflicting. Two cars appear to have been forwarded with specific routing on the bills of lading unchanged by the carrier. With respect to all the other cars the bills of lading show that the specific routing named therein was canceled by the carrier. The testimony in regard to the manner of this cancellation is unsatisfactory, and there is nothing to show conclusively whether or not the shipper acquiesced in such cancellation of its routing instructions. On behalf of defendants it is claimed that complainant was communicated with by telephone and the routing instructions changed. However, the receipt of the telephone communications with regard to these shipments, and the giving of authority to change the routing is denied by complainant.

Upon the record it is difficult to determine whether or not the Lehigh Valley Railroad is chargeable with the misrouting, but even assuming that the carrier was entirely at fault, it must be remembered that the contract provided for the assumption of charges in excess of 3 mills per ton per mile only in case shipments were prepaid to Bergen Junction and no advance charges followed from connections. As a matter of fact these shipments were not prepaid, so that even if the shipments had been forwarded in accordance with shipper's routing instructions, under the terms of the contract the Erie & Jersey Railroad could not have been compelled to assume any part of the charges, and there is no evidence to the effect that the requirement as to prepayment would have been waived by the Erie & Jersey Railroad. Carriers are bound to route shipments delivered to them as directed by the shipper, and are liable for damages due to their failure to follow the instructions, but in this

case complainant failed to abide by the terms of its contract and prepay the shipments to the junction of the Erie Railroad. The local rate from Bergen Junction to Campbell Hall was \$1.25 per ton; therefore if the shipments had moved as routed the rate from point of shipment to destination would have been \$2.05 per ton, or 30 cents higher than was charged via the route over which they did move.

Upon consideration of the whole record we are of the opinion that complainant was not damaged by any action of defendants, and it follows that the complaint must be dismissed.



No. 4380.

ASBURY SMITH LOGSDON

*v.*

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted January 12, 1912. Decided June 3, 1912.*

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Rate of \$4.854 per ton on coal from Marissa, Ill., to Fort Worth, Tex., when loaded in open cars, not shown to be unreasonable. Complaint dismissed.

*Lindsley M. Brown* for complainant.

*D. Uptegrove* and *Roy F. Britton* for St. Louis Southwestern Railway.

*A. P. Humburg* for Illinois Central Railroad Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant alleges in his petition, filed September 2, 1911, that he is a dealer in coal at Fort Worth, Tex., and that on the 12th day of September, 1910, a carload of coal weighing 106,900 pounds was shipped from Marissa, Ill., consigned to him at Fort Worth, for the transportation of which the defendants collected charges in the sum of \$259.44, based upon a rate of \$4.854 per ton, which is alleged to have been unreasonable to the extent it exceeded a rate of \$3.15 per ton. Reparation is asked.



At the time of the movement there was a joint through rate in effect via route the shipment moved of \$3.15 per ton from said point of origin to destination when the coal was loaded in stock or box cars, the purpose being to induce the movement of this sort of cars southward that they might be loaded for the return trip with finished lumber or other freight requiring cars of this character. The tariffs of the defendants had the effect of specifically providing that the combination rate of 60.4 cents per ton from point of origin to Gale (or Thebes), Ill., and \$4.25 per ton from this junction point to destination should apply when the coal was loaded in open cars.

The shipment originated on the line of defendant, The Illinois Central Railroad Company, was loaded in an open car, and was transported by this carrier to Thebes (or Gale), and there delivered to its connection, the St. Louis Southwestern Railway Company, for carriage to destination. No bill of lading was filed in the record, nor was there any testimony showing what routing instructions, if any, were given. The rate of \$3.15 to Fort Worth via the Iron Mountain applies only from mines in Illinois located upon its lines. One of the contentions of the complainant is that had the car been tendered to the Iron Mountain at Thebes (or Gale) the through rate of \$3.15 would have been applied, but this is not true. The \$3.15 rate applied to shipments in box or stock cars. There was not and there is not now a through rate of \$3.15 via any route from point of origin to destination when shipments are made in open cars.

The shipment took the rate provided in the tariff via the route of movement for coal loaded in an open car; the charges based thereon were not shown to be unreasonable. The complaint must be dismissed, and an order will be entered accordingly.

No. 4529.

PAINE LUMBER COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-  
WAY COMPANY ET AL.

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*Submitted March 1, 1912. Decided June 3, 1912.*

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A carload shipment of doors was offered for transportation from Cleveland, Ohio, to Oshkosh, Wis., with routing instructions under which the shipment could be forwarded over either of two different routes, both routes involving the same carriers and both carrying equal joint through rates. The sums of the intermediate rates, however, were not equal, the aggregate of the intermediate rates over the route of movement being greater than the joint through rate, while via the other route the aggregate of the intermediate rates was less than the joint through rate which was therefore prima facie unreasonable. Subsequently the latter joint rate was reduced to the sum of the intermediate rates. Upon complaint alleging misrouting on the ground that had shipment been forwarded via the latter route a basis for reparation would have existed, *Held:*

1. That the initial carrier, having forwarded the shipment over an available and reasonable route which complied with the routing instructions and via which the lowest lawful rate was applicable, can not be charged with misrouting.
2. That no presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates via another route would make a lower charge.

*G. M. Stephen* for complainant.

*D. P. Connell* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By petition, filed October 27, 1911, the complainant, a corporation with its offices at Oshkosh, Wis., alleges that an unreasonable rate was charged for the transportation of one carload of doors shipped from Cleveland, Ohio, to Oshkosh. Reparation is asked.

The shipment, weighing 29,900 pounds, moved July 13, 1910, over the lines of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Chicago & North Western Railway Company. Routing was indicated on the bill of lading in the following terms: "Big 4 & C. & N. W." Two routes from Cleveland to Oshkosh with



the roads named as the only participating carriers were available, one via the Big Four to Peoria, thence over the Chicago & North Western to Oshkosh, hereinafter called the Peoria route, and the other via the Big Four to Chicago, thence over the Chicago & North Western to destination, hereinafter called the Chicago route.

At the time the shipment moved there was a joint through rate of  $30\frac{1}{2}$  cents per 100 pounds applicable over either route, and freight charges in the sum of \$91.19 were properly assessed upon the basis of this joint rate. Concurrently the sum of the intermediate rates via route of movement was  $33\frac{1}{2}$  cents— $17\frac{1}{2}$  cents to Peoria and 16 cents beyond, making it 3 cents higher than the joint through rate. The sum of the intermediate rates via the Chicago route was  $24\frac{1}{2}$  cents, made up of fifth class rate of 15 cents to Chicago and commodity rate of  $9\frac{1}{2}$  cents beyond. Subsequently to the movement the joint rate via the Chicago route was reduced to the basis of the intermediate rates stated. The Big Four forwarded the shipment via Peoria and complainant alleges misrouting, claiming reparation on the ground that had the shipment moved via the Chicago route the sum of the intermediate rates, namely  $24\frac{1}{2}$  cents, would have been *prima facie* the measure of a reasonable rate, and he would have had then a basis for reparation.

We thus have presented for determination the question whether there is misrouting in a case where a shipment is offered to a carrier with routing instructions which permit of forwarding via either of two different routes, both involving the same carriers and both carrying the same joint through rate, but with the aggregate of the intermediate rates via the route other than the one over which the initial carrier forwarded the shipment less than the joint through rate.

The Big Four operates over its own tracks to Peoria, but into Chicago it uses the rails of the Illinois Central Railroad from Kankakee, Ill. The distance via route the shipment in question moved is 690.9 miles and over the Chicago route 642.8 miles. Counsel for complainant, in support of the contention that the Chicago route is the natural and reasonable one, directs attention to tariffs naming rates on various commodities from Cleveland to Oshkosh applicable via Chicago and Chicago junctions, but not via Peoria. The defendant, however, avers that a great deal of the traffic, where the tariff does not specify the junction, is routed via Peoria to avoid the congestion in the Chicago terminals, the haul over that route being only 48 miles longer. Traffic over the Big Four destined to Oshkosh via either of the routes involved moves through Indianapolis, Ind., which point is southeast of both Chicago and Peoria.

The duty of the carrier in this instance was to forward the shipment via the cheapest reasonable route available under the routing instruc-

tions given by the shipper. The carrier forwarded the shipment via the Big Four and Chicago & North Western in accordance with the routing instructions and the rate at the time of movement was the same over both of the routes available. The evidence does not show that the route of movement is an unreasonable one. We are of the opinion, therefore, and find that the initial carrier can not under the facts and circumstances of this case be held to have misrouted the shipment.

No evidence was offered tending to prove that the 30½-cent rate charged was an unreasonable one when applied to the Peoria route, over which the sum of the local rates exceeds the joint through rate, and the circumstance that via the Chicago route a combination rate lower than the joint through rate via Peoria was in effect is not sufficient to establish the unreasonableness of the joint rate over the Peoria route. An order dismissing the complaint will be entered.

24 I. C. C.



No. 4414.

CEASAR E. CASASSA

v.

PENNSYLVANIA RAILROAD COMPANY ET AL

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*Submitted March 7, 1912. Decided June 8, 1912.*

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Defendants deliver to merchants located in that part of the city of Washington, D. C., known as Georgetown, certain classes of freight in less-than-carload lots, free of charge, but refuse to grant like free delivery to merchants located on Fourteenth street northwest, between Florida avenue and Park road, in said city. Considering all the facts and circumstances of the case; *Held*, That such practice results in unjust discrimination against complainant and other merchants on Fourteenth street in the locality described, from which defendant should be required to cease and desist.

*Charles B. Coffin* for complainant.

*Henry Wolf Bikelé* for Pennsylvania Railroad Company and Philadelphia, Baltimore & Washington Railroad Company.

*W. A. Parker* for Baltimore & Ohio Railroad Company.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainant, a confectionery merchant, whose place of business is at No. 3142 Fourteenth street northwest, in the city of Washington, D. C., filed his petition September 19, 1911, in which he alleges in substance that defendants unjustly discriminate against him and other merchants doing business in the same locality by charging them for the delivery of interstate freight, while at the same time they deliver such freight free of charge to merchants and business men in other parts of the city, and in some instances at much greater distances.

The prayer of the petition is that defendants be required to cease and desist from such discrimination, and to provide free delivery to complainant and other persons engaged in business on Fourteenth street between Florida avenue and Park road, the same as now extended to persons doing business in that part of the city known as Georgetown.

Under defendants' tariffs at present in force free delivery on Fourteenth street extends north only to Florida avenue, while such

delivery is made as far west as Thirty-seventh and U streets in Georgetown. The freight station of the Baltimore & Ohio Railroad Company is situated at New York and Florida avenues northeast, and that of the other two defendants at Virginia avenue and Four-and-a-half street southwest. From the latter station to Thirty-seventh and U streets the distance is five or six blocks greater than to complainant's place of business. From the former station to the same point the distance is very much greater than to complainant's place of business. The controversy involves shipments of freight of the first four classes in less-than-carload lots.

Complainant contends that it is unduly prejudicial to him and to other merchants similarly situated for defendants to charge for the delivery of merchandise to their places of business while at the same time granting free delivery to merchants and business men more distantly located.

The service was established nearly 30 years ago and includes collection of freight as well as its delivery. Though the city has grown rapidly in recent years and has greatly increased in population, especially in the section here in question, the limits remain practically the same to-day as they were in the beginning. For a brief period free deliveries were made on Fourteenth street north of Florida avenue as far as Park road, but this service was abandoned January 1, 1906, and has not been accorded since that time.

Defendants say that Georgetown was originally included in the free zone because of the great amount of merchandise shipped to and from that section. That there are now and have been for many years a large number of stores and business houses in Georgetown, and some industries that furnish return freight, is not questioned. But it also appears that, due to the increased growth of Washington north of Florida avenue on Fourteenth street and in the territory adjacent thereto, there are now in that vicinity approximately 70 stores and business houses in actual operation; also a general market, an ice factory, and other business establishments and industries. The quantity of merchandise shipped to that section has increased accordingly.

The delivery charge to points beyond the free-delivery zone, as shown by the evidence, is 2 cents per 100 pounds, with a minimum charge of 10 cents per package. This charge is made by drayage companies and is not on file with the Commission. The evidence shows that in many instances more than the minimum charge has been collected from complainant on packages weighing less than 100 pounds. It is not contended that the charges for the drayage service are in themselves excessive or unreasonable. The chief ground of complaint is that of unjust discrimination because of the free delivery extended to Georgetown. The free-delivery limits are prescribed by the defendants in tariffs issued and filed by them.



Defendants deny that undue discrimination exists. They contend that no damage results to complainant when compared with Georgetown merchants. We are not favorably impressed with this contention. The fact that defendants require complainant and other merchants similarly situated to pay delivery charges, whereas they do not require any such payment from merchants engaged in like kinds of business in other and more distant parts of the city must necessarily result in undue prejudice and disadvantage to both persons and locality.

Another contention is that to grant free delivery to persons in the locality in question would invite complaints and pressure from other localities in the city for like privileges. We have frequently said that cases of alleged undue preference or prejudice must be adjudged upon their respective merits, and manifestly we could not in any case refuse to grant relief merely on the ground that other persons or localities might be thereby induced to seek like relief.

Under all the facts and circumstances we are of opinion and find that the practice of defendants in charging complainant and other merchants in the same locality for the delivery of their merchandise, while at the same time extending free delivery to merchants and other business men located in Georgetown results in undue discrimination against complainant and the locality in which his place of business is situated.

An order will be entered requiring the defendants to cease and desist from the practices herein condemned.

24 I. C. C.

No. 4470.

CHARLES A. FORD ET AL.

v.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

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*Submitted March 13, 1912. Decided June 3, 1912.*

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1. A rule of the defendant which prohibits the sale on its trains of round-trip tickets to interstate passengers from its station in Washington, D. C., where such tickets are kept on sale, not found to be unreasonable or unduly discriminatory.
2. Defendant required to accord to passengers boarding the cars at Bureau of Engraving and Printing, in the city of Washington, the same privileges as at other non-agency stations.

*J. A. Albrecht* for complainants.

*John S. Barbour* for defendant.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Complainants, Charles A. Ford and Roselle A. Ford, his wife, are residents of the city of Washington, D. C., and occasionally travel over defendant's lines between Washington and points in the state of Virginia. Defendant is a common carrier engaged in operating certain electric railway lines one of which extends from Washington via Clarendon and Falls Church, Va., to and beyond Robey, Va.

In their petition, filed October 9, 1911, complainants assail as unreasonable and discriminatory a rule of the defendant company which prohibits the sale on its trains of round-trip fares to passengers from its Washington station, situated at Twelfth street and Pennsylvania avenue northwest.

The facts are undisputed. In September, 1911, complainants boarded one of defendant's cars at its Washington station and requested the conductor to sell them tickets to Robey, Va., and return. The conductor refused to do so, and collected from each the regular one-way fare of 30 cents from Washington to Robey. Upon their return on the same day complainants were charged fares of 30 cents each, which made the total charge both ways 60 cents for each passenger. The regular round-trip fare between Washington and Robey is 50 cents, and tickets were on sale for that amount at defendant's Washington station.

Defendant publishes in its tariff a rule prohibiting the sale on trains of round-trip tickets to passengers from Washington. Complainants



knew that such tickets could be purchased at the Washington station, but were not aware that they would be required to pay the regular one-way fare if they deferred purchasing tickets until they were on the train. They were in a hurry at the time, and to avoid delay and possible danger of missing the car they desired to take, they made no effort to purchase tickets from the agent at the station. There is no question that they could have obtained round-trip tickets at the station if they had applied for them.

The effect of the rule is to require round-trip tickets to be procured by passengers from stations where they are kept on sale before boarding the cars. Passengers from stations where such tickets are not on sale are allowed to purchase them from conductors on the trains. The station at Twelfth street is defendant's only station in Washington. There are other points within the city limits where the cars stop to receive or discharge passengers, one of which is at the Bureau of Engraving and Printing, at Fourteenth and B streets southwest.

The question therefore is whether the rule is unreasonable or unduly discriminatory. The carrier offers to the public, through its published tariff, a round-trip passenger service at a rate which is relatively cheaper than the one-way service, but the carrier requires passengers from stations where ticket agents are maintained to procure their tickets from such agents. We see nothing in the condition that tickets must be purchased of station agents, where there are such agents, that can justly be regarded as either unreasonable or unduly discriminatory. Such a rule simplifies the duties of the conductor and in other respects promotes safe and efficient service to the public; and the rule applies on equal terms to all round-trip passengers from such points, and upon the record we can not condemn it as unreasonable.

Another rule of the carrier prohibits the sale of round-trip tickets from Fourteenth and B streets southwest in Washington, and it is suggested that the effect thereof is to discriminate against passengers boarding the cars at that point. As no station agent is maintained at that point, we think that passengers boarding the car there should be permitted to purchase tickets, as is done at other nonagency stations. Defendant will be required to amend its tariffs so that passengers boarding the car at the Bureau of Engraving and Printing may purchase tickets the same as at other nonagency stations. The case will be held open for 60 days to afford defendant an opportunity to amend its rules accordingly.

No. 3456.

CHIPPEWA VALLEY & NORTHERN RAILWAY COMPANY  
v.  
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY.

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*Submitted January 6, 1911. Decided June 5, 1912.*

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Defendant should resume the joint through arrangements which existed with complainant carrier prior to May 1, 1910, and to restore the tariffs which were canceled; but divisions allowed complainant should not exceed  $1\frac{1}{2}$  cents per 100 pounds.

*G. L. and G. H. Williams* for complainant.

*A. H. Bright, W. A. Hayes, and Kenneth Taylor* for defendant.

REPORT OF THE COMMISSION.

*PROUTY, Chairman:*

About the year 1900 the Arpin family, consisting of six or seven individuals, decided to locate a sawmill at Atlanta, Wis., being the owners of considerable timberland in that vicinity. Their purpose was to cut off the timber and subsequently sell the land for farming purposes.

Bruce, Wis., then a village of six or seven hundred people, is situated upon the line of the defendant. Atlanta, where it was proposed to locate the mill, is some 2 miles north of Bruce. For the purpose of transporting the lumber from the mill to Bruce and also to supply the mill with logs a railroad was necessary, and upon looking over the situation these people became convinced that it would be good policy to construct a permanent railway running from Bruce north, up the Chippewa Valley. The country was then for the most part covered with timber and unsettled, but the soil was fertile, there were several undeveloped water powers upon the Chippewa River, and it seemed inevitable that in the ordinary course of events this territory would supply traffic for a railroad, at first in the taking out of the lumber and subsequently in serving the farmers and the industries which would naturally locate there.

In view of these considerations it was determined to build and operate a railroad independent of the sawmill plant, and the necessary articles of incorporation were taken out under the laws of the state of Wisconsin.



The mill was built and has been operated by the Arpin Hardwood Lumber Company, also a Wisconsin corporation. The record shows that the railroad was organized before the lumber company, but Mr. Arpin, in detailing the history of the enterprise, states that while this might have been so both corporations were in pursuance of a general scheme, and neither would have been created without the other. The mill could not do business without the railroad. Upon the other hand the railroad could not exist at first without the patronage of the mill.

The first piece of railroad constructed was from Bruce to Atlanta. This line was used from the outset in transporting lumber from the mill to Bruce and supplies of various kinds from Bruce to Atlanta. It was never used as a logging road except to transport logs originating on the line of the defendant and brought by the defendant to Bruce.

As soon as the mill began operations the railroad was extended north toward Exeland, then a small hamlet in the Chippewa Valley, without any railroad connection whatever. As the road was extended the logs tributary to it were brought to the mill, and this was in the beginning the principal function of this part of the line.

The Chippewa Valley & Northern reached Exeland in 1908 and was the first road to enter that village. Some months afterwards the Wisconsin Central, then an independent company, now controlled by the defendant, also reached here and made connection with the complainant. The distance from Atlanta to Exeland is some 12 miles. The complainant has surveyed a route north from Exeland to Radisson, a village upon the Chippewa River, at which an extensive water power is now being developed, and is proceeding with the construction of that line. The distance from Exeland to Radisson is about 7 miles.

The railroad of the complainant is laid with 60-pound rails; its maximum grade is  $1\frac{1}{4}$  per cent, and to obtain this several comparatively heavy cuts and fills have been made. Its bridges and its culverts are substantial. It was stated by the complainant and not denied by the defendant that the road was fully up to the ordinary branch-line construction in that vicinity.

The defendant has two or three times had occasion to detour its passenger trains over this line between Bruce and Exeland and has done so without difficulty.

The equipment of the road is now 2 locomotives, 32 logging cars, and a motor car for the transportation of passengers.

There was no contract, apparently no definite understanding between the complainant and the defendant as to what arrangements should be made for the handling of traffic to and from Atlanta. In

point of fact the defendant and the complainant have from the first agreed upon joint tariffs by which the same rates have been applied from Atlanta as from Bruce on lumber and most lumber products. These joint rates have also covered certain other commodities in and out; just what the record does not clearly show, although it does appear that some commodities have moved under the sum of the locals, as for example, cordwood, of which considerable quantities are shipped to Minneapolis markets by the Arpin Company and by other producers, and which pays the local rate to Bruce and the local rate from Bruce. The record fails to show the exact divisions which were allowed to the Chippewa Valley & Northern on this through business previous to 1908, but the evidence of the complainant tends to show that they amounted to from \$5 to \$8 per car. In 1908 a definite arrangement was entered into by which the divisions were specified, ranging from  $1\frac{1}{2}$  cents per 100 pounds when the traffic was to near-by points to  $2\frac{1}{2}$  cents per 100 pounds to more distant points. To Iowa, Nebr., etc., this was 2 cents; to Minneapolis, although the distance was shorter, the division was  $2\frac{1}{2}$  cents; to points upon the Canadian Pacific 3 cents per 100 pounds was allowed.

The parties proceeded under this joint arrangement until April 1, 1910, when the defendant notified the complainant that, owing to a decision of this Commission, it could no longer pay these divisions, and that the same would be discontinued May 1, 1910. Since that date no divisions have been allowed.

The only reason assigned by the defendant in its correspondence with the complainant, and the only one insisted upon at the hearing for the discontinuance of these joint through arrangements, was that, under the ruling of this Commission the payment of these divisions was unlawful because the same individuals owned the sawmill which furnished the bulk of the traffic with respect to which the divisions were paid and the railroad to which they were paid.

The authorized capital stock of the complainant company is \$150,000 of which \$58,000 has been issued and is now outstanding. The capital stock of the Arpin Hardwood Lumber Company is \$200,000, the total amount being outstanding. The stock of both the railroad company and the lumber company is entirely owned by the same individuals, but not in the same proportions. The railroad has a bonded indebtedness of \$100,000, of which \$80,000 are held by the John Arpin Company, an older corporation than either the railroad company or the hardwood lumber company. The entire capital stock of the John Arpin Company is also owned by the members of the Arpin family, but in still different proportions.

It is plain that the Chippewa Valley & Northern Railway Company is a common carrier by rail.



It was the purpose of its builders to construct a railroad.

The company was chartered to build a railroad and was given and exercised the right of eminent domain in the prosecution of that purpose.

It is recognized by the commission of the state of Wisconsin as a railroad and is taxed as a railroad.

It reports to this Commission and publishes tariffs applicable to its interstate transportation.

It operates both freight and passenger service. Until recently its passenger operations have been insignificant, but something over one year ago it purchased a motor car for exclusive use in passenger and express service, and it now operates this car twice daily between Bruce and Atlanta and three times per week between Atlanta and Exeland. For the month of September, 1910, that being the last month available previous to the taking of this testimony, the passenger receipts were \$115; freight, \$656. The ordinary freight receipts are about \$1,000 per month.

At the outset practically all the business of the railroad was furnished by the Arpin Hardwood Lumber Company, and the bulk of its business is still on account of that company, although it is beginning to handle considerable freight of all kinds for the general public. It was said that at the present time about 90 per cent of its freight receipts were from business connected with the lumber company.

The Bruce rate upon lumber and other mill products has always been applied from Atlanta and there is no apparent reason why it should not be. Tony is 15 miles west of Bruce and it takes the same rate as does Bruce.

In point of fact the Arpin Hardwood Lumber Company has always paid to the Chippewa Valley & Northern Railway Company the tariff rate upon all lumber shipped by it. For the movement of this lumber from Atlanta to Bruce the complainant has never made any charge against the Arpin Hardwood Lumber Company, nor should it have done so, since the rate includes the entire cost of the service.

For all logs moved into the mill the Arpin Lumber Company has paid to the railway company a tariff rate of so much per car and the testimony shows that the rate charged by the Chippewa & Northern has been substantially identical with rates charged upon main lines of railroad for the movement of logs for similar distances. Thus the charge per car from what was known as Camp No. 4, about 9 miles north of Atlanta, was \$3.75, and it was said that this was exactly the charge made by the Omaha road for moving the same kind of a car the same distance.

The cars are small, holding but a single tier of logs, which will saw out about 3,000 feet of lumber.

So long as the operations of the mill company and the railroad company are kept entirely separate, as they have been in this case, and so long as the divisions allowed are not excessive, it is difficult to see what valid objection can be urged to an arrangement like that which existed between the defendant and the complainant up to May 1, 1910.

The Arpin Hardwood Lumber Company has paid exactly the same rate upon its product to market and for hauling its logs to the mill which its competitors have paid.

The Chippewa Valley & Northern Railway Company, under these rates, has never in the past earned, according to its reports to this Commission, 6 per cent upon the cost of its property or the cost of its reproduction.

In our opinion the defendant should resume the joint through arrangements which existed prior to May 1, 1910. Since through rates did not apply in all cases, and since we have only considered the general question presented by the parties, the defendant will only be ordered to restore the tariffs which were canceled.

It is, however, evident that the payment of an excessive division to this railroad would work an actual discrimination in favor of the owners of the Arpin Hardwood Lumber Company, and, in holding that through arrangements should be resumed, we deem it proper to say that the divisions allowed the Chippewa Valley & Northern ought not, in our opinion, to exceed in any case  $1\frac{1}{2}$  cents per 100 pounds.

It is our understanding that the Chippewa Valley & Northern Railway has applied the same rate from Atlanta since May 1, 1910, when these divisions were withdrawn, which had been in effect before. This being so, the defendant should account to the complainant for divisions upon the basis of  $1\frac{1}{2}$  cents since that date.

24 I. C. C.



No. 3518.

LAONA & NORTHERN RAILROAD COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY  
COMPANY.

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*Submitted April 8, 1911. Decided June 5, 1912.*

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Defendant should reinstate the joint tariffs which existed with complainant carrier prior to May 1, 1910, but under the circumstances of this case the complainant's divisions ought not to exceed  $1\frac{1}{2}$  cents per 100 pounds on lumber and mill products.

*Gill, Barry & Mahoney* for complainant.

*W. A. Hayes* and *A. H. Bright* for defendant.

REPORT OF THE COMMISSION.

*PROUTY, Chairman:*

In 1899 the Connor Land & Lumber Company located its sawmill about three-fourths of a mile from the village of Laona, Wis. The Chicago & North Western Railway had just before reached the village of Laona with one of its lines and was at that time the only railroad serving that community. It seems to have constructed a switch from some point upon its line to the mill of the lumber company, which it operated at its own expense.

To-day the village of Laona has about 1,200 population, with the usual stores, hotels, saloons, but with no other manufacturing establishment than the sawmill. It was said in testimony that two-thirds of the inhabitants depended for employment upon the Connor Land & Lumber Company.

The line of the defendant railroad ran within about 10 miles of the village of Laona, but had no connection either with the village or with the mill of the Connor Land & Lumber Company.

Being desirous of obtaining a portion of the traffic originating at said mill and village, the freight department of the defendant company applied to W. D. Connor, who was then the president of the mill company and who seems to have been the moving spirit in the enterprise. As a result of the negotiations thus opened up, a contract was signed between Mr. Connor, as an individual, upon the one part and the defendant upon the other, by which Mr. Connor agreed to construct a railroad connecting the mill of the Connor Land & Lumber

Company and the village of Laona with the line of the defendant, and the defendant upon its part stipulated to provide a connection with this railroad when built, to establish joint tariffs for the movement of traffic both in and out and to allow the railway certain divisions which were specified in the agreement itself.

It does not appear from the record whether there was at that time any station of the defendant at the proposed point of intersection, but we understand from the evidence that to-day this is known as Laona Junction, and that the defendant maintains a station and an agent at that point.

A traffic expert was called as a witness, who testified that he was familiar with the territory in question and with the divisions usually allowed by main-line roads to originating roads of this character. He stated that in his opinion at the time this agreement was entered into it would have been regarded as good policy to obtain business by allowing the divisions provided for in the contract, and that such divisions were fairly in line with those usually allowed originating roads of the character of the Laona & Northern. He was, however, of the opinion that, had this contract been made five or six years later, the divisions would have been somewhat less than those named.

It seems probable that the defendant would have been glad to have contracted with anyone for the construction of this line of railroad and to have paid the divisions upon whatever traffic might have been delivered to it or received by the Laona & Northern from it under the arrangement. That would have been a good business proposition upon the part of the defendant. No individual except Mr. Connor could probably have been found who would have agreed to build and operate the road, since he alone knew that he controlled a sufficient amount of traffic to make the road when built a paying investment under the divisions specified.

After the execution of the contract Mr. Connor proceeded to organize the Laona & Northern Railway Company under the laws of Wisconsin, and in 1902 the railroad itself was built from Snyders, the name of the place where the mill of the Connor Land & Lumber Company is located, to Laona and thence to Laona Junction, the entire distance being about 10 miles. The road is of standard gauge and laid with 60-pound rails. Its bridges are substantial and it has several heavy cuts and fills. Mr. Connor stated that the road was built as a permanent institution for the purpose of being operated as a railroad, and that it compared favorably with the average branch lines of the defendant or the Chicago & North Western. At the present time the Laona & Northern Railroad Company owns 3 locomotives, 60 or 70 cars, one of which is a combination baggage and passenger car. It operates regular passenger service between



Laona and Laona Junction. For the year ending June 30, 1910, its entire gross receipts were \$12,944, of which \$957 were from passengers.

At the present time it carries no mail and no express, but is now negotiating with the Post Office Department for the establishment of a regular mail service. The greater part of its freight business is traffic received from and consigned to the Connor Land & Lumber Company, but it handles a considerable amount of freight for other parties. In the month of October, 1910, being the last month for which the figures were available at the time of the hearing, its freight receipts were about \$1,000 from all sources, of which \$100 was from parties other than the Connor Land & Lumber Company, and this was said to be about the then average.

The original line first constructed between Snyders and Laona Junction has never been used as a logging road. It was built for the purpose of handling freight of all kinds between these points and not primarily for the purpose of stocking the mill. A few logs have been bought upon the defendant railway which have come to Laona Junction, and thence have been transported by the Laona & Northern to the mill at Snyders. More logs have originated upon the line of the North Western, by which they have been transported to Laona and there received by the Laona & Northern. In both these instances the mill company pays the regular tariff rate of the defendant or the North Western to the junction point and pays the Laona & Northern for its service from the junction point to the mill.

No logging has ever been done along the original line of the Laona & Northern, but within the last two or three years this road has been extended south of Laona through lumber lands owned by the Connor Land & Lumber Company, and at the present time about 50 per cent of the stock of the mill originates upon the line of this railroad by which it is brought to Laona and thence taken to the mill. The operations of the lines south of Laona are not involved in this proceeding, there being no connection between the operation of those lines and the amount of these divisions.

The testimony showed that the territory penetrated by this new line was fertile and heavily timbered; that a considerable part of the land reached by the railroad belonged to persons other than those connected with the railroad or with the Connor Land & Lumber Company; and that these people were beginning to ship out considerable quantities of pulp wood and other forest products which were consigned to other persons than the Connor Land & Lumber Company at points upon the North Western and upon the line of the defendant beyond Laona Junction.

It was also said that this territory was being settled up by farmers, and the opinion was expressed that in the future the great bulk of

traffic would originate south of Laona. This portion of the road is being constructed in the same substantial manner as the original section between Laona and Laona Junction, the purpose being to build finally to a connection with the St. Paul, a distance of some 25 miles.

Under the law of Wisconsin the complainant company may exercise the right of eminent domain and it actually did so in securing its right of way. It makes regular reports to the railroad commission of Wisconsin, and is recognized by that commission as a common carrier.

The railroads of Wisconsin are not taxed locally, but pay a single tax to the state. For the purposes of taxation the Laona & Northern is treated as a railroad.

When the road of the complainant was completed and ready for operation, the defendant established in connection with the complainant joint tariffs to and from Laona to all points upon nearly all articles and allowed the divisions specified in the contract.

Mr. Connor testified that he had two objects in view in making the contract.

First. He did not like to rely upon the Chicago & North Western entirely for the handling of his business, but desired the benefit of a second line.

Second. The distance by the North Western line from his mill to Minneapolis and similar points was circuitous and the rate unduly high. By constructing a road to a connection with the defendant the distance was much reduced and the rate should be reduced. In point of fact the joint tariffs established from Laona were as a rule the same as those already in effect by the North Western, but a lower rate was named on lumber and other articles between Laona and Minneapolis. It was said that the rate of the North Western to Minneapolis had not been correspondingly reduced, but was still higher than that via Laona Junction.

These joint tariffs were continued in effect and business regularly handled under them until May 1, 1910, when the defendant notified the Laona & Northern that under a decision of this Commission it could not lawfully continue these divisions, since the ownership of the road and the mill which furnished the greater part of the freight business handled was identical. For this reason tariffs were filed canceling the previous joint tariffs.

Apparently, since the cancellation of the joint tariffs, the defendant has applied from Laona Junction the same rates which were formerly in effect from Laona, so that it now enjoys for the performance of the same service which it formerly rendered compensation exceeding that originally in effect by the amount of the division.



The defendant in substance conceded in its answer and repeated upon the trial that the reason for canceling these joint tariffs was because it understood this Commission to have decided that the allowance of the divisions would be unlawful. It appears that there are instances where the defendant allows divisions of this character to roads similar in most respects to the Laona & Northern, but it was said on the part of the defendant that the conditions of ownership in case of these roads were different. The real question therefore presented is whether the defendant may lawfully enter into joint arrangements with the complainant. If it can, it makes no serious question that it ought to do so, and apparently to refuse to do so would be to discriminate against this company as compared with other companies, and thereby against shippers over this line as compared with shippers over other lines, since upon other lines the rate from the territory is applied upon the branch line.

The capital stock of the Connor Land & Lumber Company is \$300,000, of which W. D. Connor and his brother own about three-fourths. The capital stock of the Laona & Northern Railroad Company is \$50,000 and W. D. Connor and his brother own all of it, except what is necessary to qualify a board of directors. The railroad company has no bonded indebtedness, but that company has borrowed a very considerable amount of money, which is carried as a floating indebtedness. This amount, which was said to be at the time of the hearing \$125,000, has been furnished by the Connor Company, a Wisconsin corporation with a capital stock of \$200,000, in which W. D. Connor and his brother seem to be the controlling but not the only stockholders.

The Laona & Northern is manifestly a common carrier in every sense of that word. This Commission held in the *Manufacturers Railway of St. Louis case*, 21 I. C. C., 304, that the circumstance that the stock of a railroad company was owned by the same individuals who owned the stock of that company which was the principal shipper over the railway did not of itself render illegal the making of joint rates and the allowance of divisions, and in that case we ordered the joint rates reestablished. Manifestly in the case before us, following that decision, these joint tariffs should be reinstated, and it will be so ordered.

The defendant suggested that if the Commission should hold that these joint rates should be established it ought to examine the propriety of the divisions themselves, and in this suggestion we concur, since the effect of an excessive division is really a preference to the owner of the lumber company.

In reaching a conclusion we are not influenced by the contract entered into between Mr. Connor and the defendant. Whatever may

be the rights of the parties in a court of law under that agreement we clearly have no authority to enforce it in this or any other proceeding. Before us it is only admissible as a declaration of the defendant as to what, in its opinion, would be a proper division under the circumstances.

The divisions specified in the contract vary according to the destination of the traffic. The divisions named are to apply only upon lumber and mill products and only to the rates then in effect, but it is further provided that should the rate change the division is to change in the same proportion and that divisions upon other traffic are to be granted in the same proportion. Upon lumber for New York and New York points the Laona & Northern was to receive a division of 5 cents; for Minneapolis and points beyond,  $4\frac{1}{2}$  cents; for Pittsburgh, 4 cents; upon Chicago and similar points, 2 cents.

Under all the circumstances of this case we are of the opinion that the divisions of the Laona & Northern ought not in any case to exceed  $1\frac{1}{2}$  cents per 100 pounds on lumber and mill products. Settlement on this basis should be made from May 1, 1910, when divisions were improperly withdrawn.

24 I. C. C.



No. 4322.

LARKIN COMPANY

v.

ERIE & WESTERN TRANSPORTATION COMPANY ET AL.

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*Submitted December 9, 1911. Decided June 8, 1912.*

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1. Defendants failed to deliver at destination a pedestal, weighing 26 pounds, which formed part of a shipment weighing 215 pounds. Complainant shipped a pedestal to replace that lost by defendants and was charged therefor the first-class rate of 56 cents per 100 pounds. Defendants refuse to refund the freight charges on the second shipment, but do offer a pro rata share of the charges on the first shipment; *Held*, That the rules, regulations, and practices of the principal defendant, which exacted of complainant 40 cents for no fault of its own, simply because of the application of the rules and practices themselves, are unreasonable, unjust, discriminatory, and unlawful. Reparation awarded.
2. In so far as a bill of lading establishes a rule, regulation, or practice of transportation, which to every intent is obligatory upon the shipper, the Commission has jurisdiction over its provisions.

*O'Brian & Hamlin* for complainant.

*Henry Wolf Bickl  and Frank Rumsey* for Erie & Western Transportation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a manufacturing corporation with its principal place of business and factory at Buffalo, N. Y. By petition, filed August 14, 1911, it alleges that as a result of the failure of defendants to deliver to the consignee at Eau Claire, Wis., one boxed wooden pedestal shipped with two boxes of drugs and one box dry goods from Buffalo September 10, 1910, it was compelled on October 21, 1910, to ship another pedestal, and that defendants have unlawfully collected and retained excess transportation charges on the two shipments in the sum of 40 cents.

The facts out of which this complaint springs are undisputed and are as follows: The complainant made shipment of certain articles, of a combined weight of slightly over 200 pounds, from Buffalo, N. Y., to Eau Claire, Wis., and among these articles was the wooden pedestal in question. Through the neglect of the defendants this pedestal was lost.

The contract of sale by the complainant to its purchaser at Eau Claire involved the delivery of the entire shipment at Eau Claire, and the complainant, in order to make good the contract, was therefore compelled to and did make shipment of a second pedestal via the lines of the defendants in place of the one lost.

By the terms of the bill of lading under which the first shipment was made, settlement in case of loss en route was to be based upon the value of the articles at destination point, plus the freight, provided the freight had been paid. The pedestal weighed only 26 pounds. The defendants admitted their liability for the loss and offered to pay the complainant the value of the pedestal, plus 16 cents by way of freight, that being the same proportion of the total freight money which the weight of the pedestal was to the entire weight of the shipment. The complainant declined to receive settlement upon this basis, claiming that it should be paid \$3.56.

Under the tariff rules of the defendants the charge upon the pedestal shipped by itself to replace the one lost was 56 cents, no charge being made for less than 100 pounds. The complainant is therefore damaged as a net result of the entire transaction, and without any fault upon its part, in the sum of 40 cents. Upon this proposition there is no question, the dispute being as to whether the complainant is entitled at the hands of this Commission to an order of reparation against the defendants in that amount.

It is contended by the defendants that this is a loss and damage claim, with which this Commission has nothing to do; and to an extent this is true. The defendants lost this pedestal and offer to pay \$3.16, which would be due under the terms of the bill of lading. This Commission can not properly by its order direct the payment of this \$3.16, since a failure to pay would not be a violation of the act to regulate commerce, but would rather be a violation of the contract of shipment. But with the 40 cents in dispute this is quite otherwise. Here there is no question of neglect. The defendants admit culpability and offer to pay the value of the article. There is no question as to the application of the terms of the bill of lading, for it is perfectly apparent that that document has been correctly applied to the facts in this case. The damage to the complainant grows out of the application of the rates, regulations, and practices under which this article was transported. It is urged that the complainant does not put in issue the reasonableness of this provision in the bill of lading.

The complaint fully recites all the circumstances connected with this transaction and shows the manner in which the complainant has been injured. It then contains this general allegation:

The complainant alleges that the aforesaid practices of the defendants and the charges collected by them are excessive, illegal, unreasonable, unjust, pernicious, against public policy, and in violation of the act to regulate commerce.



The defendants were fully advised by this complaint of the thing for which they were called upon to make amends. If this complaint does not present to the Commission the question involved and decided, it would be difficult to draft one which does. The fact that the bill of lading is or is not referred to in terms can not be material. It is not the bill of lading as such, but the rules, regulations, and practices of the defendants leading to this result, which are attacked.

It is said that the provisions of a bill of lading are beyond the jurisdiction of this Commission to correct; that if unlawful they can only be so declared by a court of competent jurisdiction. But to this we do not assent.

The bill of lading is tendered to the shipper. He must accept it or his shipment will not be received. There is nothing in the nature of a contract between two voluntarily contracting parties. It is true that courts do sometimes declare void provisions in a bill of lading which are against public policy or which are so utterly unreasonable as to be against good conscience; but there certainly is a wide field in which the shipper may properly come to this Commission for a ruling as to whether the conditions of transportation which are imposed by the bill of lading are unjust and unreasonable. We hold that in so far as the bill of lading establishes a rule, regulation, or practice of transportation which to every intent is obligatory upon the shipper we have jurisdiction over its provisions.

We are further of the opinion that the rules, regulations, and practices of these defendants which exacted of this complainant 40 cents for no fault of its own, and simply because of the application of the rules and practices themselves, are unreasonable, unjust, discriminatory, and unlawful; that the complainant has been damaged to the extent of 40 cents, and is entitled to an order from this Commission requiring repayment of that amount.

It is evident that the rules of the defendants might be so amended as to remove the unlawfulness in several different ways. The real difficulty is that the complainant is allowed less in freight in settlement for the loss of the first pedestal than it is required to pay for the transportation of the second pedestal which takes its place. If, therefore, the tariffs of the defendant were so amended as to provide that when the article lost weighed less than 100 pounds the amount of freight allowed should be, not the proportion which the weight of this article bore to the whole shipment, but the minimum charge which the shipper would have been required to pay had this article been sent by itself, this would be simply reversing the rule which the defendant imposes upon the shipper. Such a rule could hardly be called unreasonable if the defendants desire to retain in the bill of lading the present provision as to the settlement of loss and damage

claims, but there are patent objections to the application of such a rule in many instances.

The more just way would seem to be to provide that where such an article is lost the carrier will transport a second article of the same kind to take the place of the first without any additional transportation charges. The tariffs of the defendant Erie & Western Transportation Company have already been amended by including a provision similar to that last above suggested. This removes the cause of complaint for the future and dispenses with the necessity of making an order as against that defendant. In our opinion the tariffs of other carriers using a bill of lading containing this provision as to settlement of loss and damage claims should be so corrected that cases like that before us can not arise. An order for reparation in the sum of 40 cents, with interest from September 21, 1910, will be issued.

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No. 4688.

JOHNSON & HUNT

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY ET AL.

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*Submitted April 27, 1912. Decided June 8, 1912.*

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Rate of 38 cents per 100 pounds on canned goods in carloads from Magnolia, Ark., to Fort Smith, Ark., moving interstate, found to have been unreasonable. Reparation awarded.

*C. D. Mowen* for complainants.

*Henry G. Herbel* for St. Louis, Iron Mountain & Southern Railway Company.

*Edwin Stewart* for St. Louis Southwestern Railway Company.

*S. S. Senne* for Louisiana & Northwest Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the merchandise brokerage business at Fort Smith, Ark. By petition, filed February 12, 1912, they assail as unreasonable and unjust a rate of 38 cents per 100 pounds charged



for the transportation of a carload of canned goods from Magnolia, Ark., to Fort Smith, Ark. It is contended that a rate of 20 cents would have been reasonable, and reparation is asked on that basis.

The shipment in question weighed 49,000 pounds, and was forwarded November 15, 1911, via the Louisiana & Northwest Railroad to McNeil, Ark., thence via St. Louis Southwestern and Iron Mountain, through Greenwood Junction, Okla., to Fort Smith, and charges thereon were collected in the sum of \$186.20.

It appears that through error of the initial line there was established in October, 1909, a joint through interstate rate of 20 cents per 100 pounds from Magnolia to Fort Smith via the route this shipment moved. Discovery of the error led to the cancellation of the 20-cent rate effective July 14, 1911, and the traffic thereupon became subject to the combination of intermediate commodity rates of 10 cents to McNeil and 28 cents beyond. Subsequently the Louisiana & Northwest Railroad, under order of the railroad commission of Arkansas, joined with the St. Louis, Iron Mountain & Southern Railway and St. Louis Southwestern Railway in joint intrastate rates established in accordance with orders of the circuit court. Effective February 14, 1912, these rates, which included a rate of 33 cents on canned goods from Magnolia to Fort Smith, were filed with the Interstate Commerce Commission to also apply on traffic moving via interstate routes between points in Arkansas. It is our information that the so-called Arkansas Court Tariff rates are still under attack in the courts.

This car moved during the interval between the cancellation of the 20-cent rate and the establishment of the 33-cent rate on interstate traffic and complainant's contention of the unreasonableness of the rate charged appears to rest largely upon the fact of the prior existence of the 20-cent rate, shown to have been published as the result of an error.

Complainants compare the rate from Magnolia, 317 miles, with the following rates to Fort Smith:

From—	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>
New Orleans, La .....	593	33
St. Paul, Minn .....	891	45
Douglasville, Ga .....	792	35
Irving, N. Y .....	1,120	49

While these comparisons are pertinent, it is necessary to take into consideration other factors than rates and distances, and none of these other factors is dealt with in the record.

Fort Smith draws its canned goods supply largely from Iowa. From Elgin, Iowa, 714 miles distant, and Vinton, Iowa, 652 miles distant, two-line hauls, the rates are, respectively, 42 and 39 cents. Rates varying from 15 cents to 21 cents applicable from southwest Missouri points on the Frisco, Kansas City Southern, and Iron Mountain to Fort Smith, one-line hauls for distances of from 136 to 340 miles, are also cited in comparison. The record shows that Magnolia ships only canned sweet potatoes, while the canned goods shipped from Iowa and southwest Missouri producing points consist of canned corn, beans, etc., but no canned sweet potatoes, and it appears, therefore, that the traffic is not competitive with that from Magnolia.

The record does not disclose the points of shipment nor the rates which afford the competition which Magnolia meets in the transportation of canned sweet potatoes, hence we are left to a determination of the relation of the rate in dispute to the rates on canned goods in general.

The distance from Magnolia to Fort Smith is 317 miles, and the haul is over the lines of three separate carriers, making the rate per ton per mile 2.1 cents. In view of the fact that defendants have established interstate rates from Magnolia to Fort Smith substantially equal to the intrastate rates, and upon consideration of all the facts and circumstances of this case, it is our conclusion and finding that the rate charged was unreasonable to the extent that it exceeded 33 cents per 100 pounds. Defendants will be required to maintain for the future a rate not in excess of the latter figure.

We further find that complainants made the shipment in accordance with the foregoing statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainants have been damaged to the extent of the difference between the amount which they did pay and the amount which they would have paid at the rate herein found reasonable; and that they are therefore entitled to an award of reparation in the sum of \$24.50, with interest from December 2, 1911. An order will be entered accordingly.

24 I. C. C.



No. 3314.  
CRUTCHFIELD & WOOLFOLK  
v.  
SOUTHERN PACIFIC COMPANY.

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*Submitted May 31, 1911. Decided November 6, 1911.*

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Re-icing charges collected from complainant by defendant for the refrigeration of cantaloupes from the Imperial Valley, California, and Yuma, Ariz., to various eastern destinations during the seasons of 1908 and 1909 found to be excessive, and reparation awarded.

*Blair, Drayton & Hillyer* for complainant.

*W. F. Herrin, F. C. Dillard, C. W. Durbrow, and H. A. Scandrett* for defendant.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The purpose of this complaint is to recover certain so-called re-icing charges collected from the complainant by the defendant for the refrigeration of cantaloupes from the Imperial Valley, California, to various eastern destinations during the seasons of 1908 and 1909. A few cars were also shipped from Yuma, Ariz., under the same icing conditions.

The refrigeration charge varied according to the eastern destination, increasing with the distance, but the re-icing charges were entirely independent of the refrigeration charge proper, and Chicago may therefore be taken as an illustrative destination point, although the shipments moved to many different places.

During the period in question the refrigeration charge from points in the Imperial Valley to Chicago was \$90 per car. The tariff in effect during the year 1908 contained the following provision:

The above rates are based on one full icing of car at loading point; extra ice required to replenish tanks before car leaves loading station shall be paid for by shipper to the local railroad agent at the rate of \$7.50 per ton.

Substantially the same provision was continued through the season of 1909, except that during the latter part of that season the price of ice was reduced from \$7.50 to \$5 per ton.

In order to appreciate the application of the above tariff provision it is necessary to understand the method in which these cantaloupes were handled. It often happens in the refrigeration of fruit that the car is not iced until after it has been loaded. This is

generally true of the movement of oranges from points in southern California, where the cars are loaded at the packing houses and taken to the concentration point, which is Colton, upon the Southern Pacific, and San Bernardino upon the Santa Fe, before the bunkers are filled with ice. Cantaloupes from the Imperial Valley can not be treated in this manner. The shipping season is during the months of June and July, when the temperature in that section is extremely high, the fruit itself is delicate, and the complainant concedes that the bunkers must be filled with ice and the process of cooling the car begun before the car is loaded. Necessarily the car itself is heated throughout when the initial icing is performed; the fruit itself is also very hot, so that for the first few hours until the car and its contents become thoroughly cool the ice melts rapidly in the bunkers. If any considerable length of time intervenes between the first icing of the car and its removal from the loading station the bunkers must be replenished with ice, the amount required depending upon the length of time which has elapsed. As a practical matter it is generally, although not invariably, necessary to re-ice the car at the loading station, so that a re-icing charge generally accrued under the tariffs in effect during the period in controversy.

The complainant insists that the imposition of these re-icing charges was unlawful in that it frequently imposed an unjust and unlawful refrigeration charge for the entire service, and especially because it was unjust, unreasonable, and discriminatory from the very nature of its application.

The total number of cars shipped by the complainant during the period covered by this controversy was about 650, upon 5 per cent of which no re-icing charges accrued. Upon the balance these charges ran from \$1 to \$48 per car. The complainant insists that the cars were, as a whole, promptly handled by them and that there was no connection between whatever delay in loading upon their part may have existed and the amount of these re-icing charges.

The following examples are selected from among a great number furnished by the complainant:

A car was placed for loading at 4.30 p. m. and was removed at 8.30 p. m. the same day, against which re-icing charges amounting to \$43 were assessed.

Two other cars were placed on the same day and were both loaded and removed on the day upon which they were placed. In case of one car the re-icing charges were \$1.24; in case of the other car \$24.

These are rather extreme instances, but they forcibly illustrate what was true as to all these cars, viz, that the amount of the re-icing charge did not depend as a rule upon the promptness with which the car was loaded by the complainant.



These shipments from the Imperial Valley were made from El Centro, Calexico, and Heber. All the icing was done at El Centro, the cars loaded at the other two points being taken after icing to the loading station and hauled back to El Centro before the re-icing. It is evident that in case of these cars the amount of ice required to fill the bunkers in re-icing at El Centro would depend upon the promptness with which the car was moved by the defendant carrier after the initial icing at El Centro.

It is also claimed by the complainant, and its evidence tends to substantiate the claim, that at El Centro itself there was often considerable delay in placing the car after the initial icing and in re-icing the car after it had been loaded. The defendant itself conceded that at times it might have been guilty of neglect, which increased the amount of ice which would otherwise have been needed for the re-icing, and one of the witnesses in its behalf stated that in such cases they endeavored to make it right with the shipper.

Without holding that a carrier may not, under some circumstances, properly charge the shipper for ice actually consumed in the process of refrigeration, we are of the opinion and find that where the refrigeration service is an entirety as in this case, where that service is wholly under the control of the carrier, which determines when ice shall be supplied and in what quantities, so that the shipper can neither direct the use nor know the amount used; where that amount depends upon the manner in which the car is handled by the railroad company itself, the charge should be a gross sum for the entire service, and that the tariff under consideration, in that it requires the shipper to pay for the amount of ice consumed in re-icing, is unjust and unreasonable and unduly discriminatory between different shippers. The carrier may protect itself against any undue delay upon the part of the shipper in loading the car after it has been iced and placed for loading, by a charge in the nature of a demurrage charge of so much per day or per hour beyond a time fixed within which the car shall be loaded, provided, always, that this, as well as the refrigeration charge itself, is just and reasonable.

The defendant itself has virtually admitted the correctness of the above holding by filing for the season of 1910 a new refrigeration tariff by which the icing charge to Chicago was increased to \$97.50, with a provision that the shipper should be allowed a certain length of time after the car was placed for loading within which to load the same and should pay \$10 per 24 hours or fraction thereof for failure to do so.

Assuming that this tariff under investigation was unlawful, to what damages, if any, is the complainant entitled? It is its claim that an order should be entered for the entire amount of the re-icing charges paid by it. The defendant insists that the rate, without the

addition of the re-icing charges, was unreasonably low, and that if any reparation is to be allowed it should only be the difference between what the complainant paid and what it should have paid upon the basis of a just and reasonable tariff.

The complaint does not allege that the refrigeration rate is unreasonable, but simply that the re-icing charges were improperly collected. It was, however, a part of the claim of the complainant that these re-icing charges added to the refrigeration rate produced, in many instances, an unjust charge in the aggregate. This was denied by the defendant, and considerable testimony was introduced upon both sides as to what would be a reasonable refrigeration charge.

Beginning with the season of 1910, as already said, the refrigeration charge to Chicago was fixed at \$97.50 per car, an advance of \$7.50 over the old rate. It was further provided that if cars were not loaded within a certain time after being placed an additional charge of \$10 for each 24 hours or fraction thereof should be made. The complainant does not dispute the correctness of the principle upon which this tariff is constructed, nor, as we understand the testimony, would it be disposed to seriously question the justice of the rate itself were it not apparently compelled to do so in maintaining its claim as to the years 1908 and 1909.

This Commission approved, in *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C. Rep., 106, a refrigeration charge of \$62.50 per car upon citrus fruit from southern California to Chicago. The haul of these oranges would be through the Imperial Valley, and it is argued that if \$62.50 was a reasonable charge from Colton, then, as a matter of course, \$97.50 must be an exorbitant charge from the nearer point at which these cantaloupes originate.

This would not of necessity follow. The investigations of this Commission into the subject of refrigeration show that the expensive part of the service, so far as the consumption of ice is concerned, rests with the initial cooling of the car. When the car is once thoroughly cooled it can be transported long distances, even in hot temperatures, with the addition of comparatively little ice. In southern California no icing is done until the oranges have been loaded into the car and the car itself taken to the concentrating point, which, upon the Southern Pacific, is Colton. There the car is iced for the first time.

In the Imperial Valley the car must be iced before it is sent to the loading tracks and must be kept iced until put into the train going east. The ice itself in the Imperial Valley costs very much more than in southern California, so that it is by no means certain that the additional cost of the ice alone might not justify a difference in rate as great as that which exists between oranges from southern California and cantaloupes from the Imperial Valley.



As already said, the reasonableness of the present refrigeration charges upon cantaloupes from the locality in question is not directly presented by this complaint. The evidence upon the part of the complainant bearing on this subject is extremely meager, while that of the defendant is comparatively full. Upon the evidence in this record we must find that during the season of 1908 and 1909, \$97.50 to Chicago, with the variations to other points named in the present tariff, would have been a just and reasonable charge. This finding is merely as to these two seasons when the cost of ice in the Imperial Valley was greater than it is to-day, and is based entirely upon this record. No opinion whatever is expressed as to the reasonableness at the present time of these charges since that question is not before us, nor is the necessary evidence before us upon which to reach a satisfactory conclusion.

We must assume, then, that during the seasons of 1908 and 1909 \$97.50 would have been a reasonable refrigeration charge to have applied to shipments of the complainant.

The act to regulate commerce required this defendant to furnish refrigeration to the complainant for a reasonable compensation. We have found that \$97.50 to Chicago and the corresponding amounts to other points named in its tariff for the season of 1910 would have been just and reasonable. If, now, we award the complainant damages in case of all shipments where the tariff charge plus the re-icing charge exceeded the amount so found to be reasonable by the amount of that excess, substantial justice will be done.

It is objected by the carrier that in some instances the complainant did not promptly load and that a penalty for its delay ought to be imposed in such instances. We have already expressed the opinion that the carrier may protect itself against undue delay by imposing a reasonable charge for such delay, but we do not think that shippers can properly be subjected to a penalty of this kind unless the tariff provides for it, so that all persons may know in advance exactly what the consequences of their acts are to be.

It is further objected that in some instances the complainant has paid less than the sum found reasonable by us, and that the underpayment ought to be used to offset the overpayment. But here, again, if the defendant has filed a tariff under which the complainant has been able to ship certain of its cars for less than the amount found to be reasonable, under which the competitors of the complainant may perhaps have shipped all their cars for less than the sum found to be reasonable, we think that the very least that can be done in protecting the rights of the complainant is to award reparation in those cases where the amount exacted exceeded the reasonable charge. If in some instances the defendant has collected both from the com-

plainant and its competitors less than a reasonable amount the fault lies with the defendant, and it should not be heard to complain.

We find that in the seasons of 1908 and 1909 the complainant shipped 353 cars of cantaloupes upon which the combined refrigeration charge and re-icing charge exceeded the amount above found to be reasonable; that upon such shipments the complainant paid as total refrigeration charges \$39,896.06; that reasonable charges would have been \$36,715.80, and that the complainant is entitled to recover of the defendant the difference between the sum paid and the sum found to be reasonable; namely, \$3,180.26, with interest from August 1, 1909.

An order will be issued accordingly.

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#### INVESTIGATION AND SUSPENSION DOCKET No. 87.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF COOPERAGE FROM SALT LAKE CITY, UTAH, TO CHICAGO, ILL., AND BETWEEN OTHER POINTS.

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*Submitted September 21, 1912. Decided October 7, 1912.*

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Increased rates on cooperage from St. Louis, Mo., and other points to Utah common points, which were suspended, are lower than the rates prescribed by us in *Commercial Club, Salt Lake City, v. A. T. & S. F. Ry. Co.*, 19 I. C. C. 218, and are therefore found to be reasonable. Order of suspension vacated.

*H. R. Small* for protestant.

*W. A. Poteet, Fred G. Wright, Martin L. Clardy, Henry G. Herbel, and B. M. Flippin* for respondents.

#### REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This case covers the suspension of certain advances in rates on cooperage, but inadvertently the title is worded to involve eastbound rates when, in fact, the westbound rates were suspended by the order.

On March 6, 1912, the Commission suspended supplement No. 1 to Poteet's Trans-Missouri freight bureau tariff, I. C. C. No. 273, and by subsequent orders extended the suspension to January 6, 1913.

24 I. C. C.



The existing items and those suspended in this proceeding are:

Item.		From—				
		Chicago, Memphis, Duluth.	Peoria.	Missis- sippi River.	St. Paul.	Missouri River.
	EXISTING.					
2715	{ Cooperage, viz: Pails, tubs (including butter tubs), drums, well buckets, kits, straight or mixed carloads, or when loaded with barrels and kegs. .... (Minimum weight 24,000 pounds.)					
2720	{ Cooperage, viz: Barrels, casks, tierces, kegs, drums, well buckets, exclusive of beer kegs and beer barrels, for which see current western classification. .... (Minimum weight 14,000 pounds, subject to rule 6-B of the western classification.) (Exception to item 2715.)	60	66½	64	65½	50½
	PROPOSED.					
2715-A. Cancels 2715.	{ Cooperage, viz: Pails, tubs (including butter tubs), drums, well buckets, kits, straight or mixed carloads, or when loaded with barrels and kegs. .... (Minimum weight 24,000 pounds)					
2720-A. Cancels 2720.	{ Cooperage, viz: Barrels, casks, tierces, kegs drums, well buckets, exclusive of beer kegs and beer barrels, for which see current western classification. .... (Minimum weight, 14,000 pounds, subject to Rule 6-B of the western classification.) (Exception to item 2715.)	95	95	88	95	77

The protest against the advance of these rates came from the National Cooperage Association of St. Louis, Mo. No interests other than those operating from St. Louis, or other than members of that association, appeared at the hearing. It appears that pails, tubs (including butter tubs), and kits, which are included in item 2715-A, are not manufactured at St. Louis, and no protest was made against that item. There is no protest against the carload minima. The question here, therefore, is whether or not the increased rates on articles covered by item 2720-A are just and reasonable. No testimony was presented except in reference to barrels, kegs, and well buckets.

While cooperage is manufactured on the Pacific coast, in Minnesota, at Omaha, Kansas City, and Chicago, the only competition on barrels, kegs, and well buckets which the St. Louis producer meets at Utah common points is that from the Pacific coast. The coopers in Minnesota, Omaha, Kansas City, and Chicago either do not manufacture the articles mentioned or they sell them locally. It was testified that not more than approximately twenty cars of barrels, kegs, and well buckets are transported per year from St. Louis to Utah common points. The Pacific coast manufacturer has most decided advantages over the St. Louis manufacturer in selling these articles

at Utah common points. His product is made from fir, which grows near his factory; the cost of manufacture is materially less; the product is considerably lighter; the shipping distance is only about one-half as great, and the freight rate is properly much lower. The St. Louis cooper makes his kegs and well buckets from gum and oak lumber which comes from southern points. Protestant's witness admits that no matter what rates he has he can not overcome Pacific coast competition at Utah common points.

Respondents rely largely upon the decision of the Commission in *Commercial Club, Salt Lake City v. A. T. & S. F. Ry. Co.*, 19 I. C. C., 218. In that case we prescribed carload commodity rates on woodenware, including, among many other articles, well buckets, drums, pails, and kits, from Chicago, Mississippi River, and Missouri River to certain Utah common points of \$1.25, \$1.20, and \$1 per 100 pounds, respectively, at minimum weight of 16,000 pounds. We also prescribed carload rates on stamped ware, which includes many articles which compete with those in controversy here, of \$1.20, \$1.15, and 96 cents. The proposed rates are lower than these and under them the earnings per car would be considerably less than under the rates prescribed by us.

The proposed rates are on the basis of the western classification ratings for similar articles. The carriers call attention to the carload minima applicable on cooperage, and show that in all instances the minima applicable on articles taking class-D rates, which are approximately near the present cooperage rates, are from two to four times as great as those on cooperage. In other words, they consider the present rates wholly inadequate for shipments of cooperage, and discriminatory against articles of a similar nature which do not take as low rates. The present class-D rates from Chicago, Peoria, and St. Paul to Utah common points are 62 cents; from the Mississippi River 57 cents; and from the Missouri River 50 cents per 100 pounds. Among the articles which take class-D rates are fire brick, sewer pipe, marble dust, pig iron, and iron ore. The car earnings on a carload of fire brick would be \$200, while the earnings on a carload of cooperage would be \$70.70.

Boxes, wooden, c. l. minimum weight 36,000 pounds; tubs, butter and lard, minimum weight 16,000 pounds; baskets, fruit, nested, minimum weight 30,000 pounds, take class-B rates under the western classification.

The carriers contend that even prior to the decision of the *Salt Lake case, supra*, it was their intention to readjust the cooperage rates so that they would not be unjustly discriminatory. They suggest that in the establishment of rates it would have been proper to follow what the Commission had prescribed as reasonable in the *Salt Lake case, supra*, and contend, with force, that they had ample



justification so to do. They refrained from so doing in order to not effect an advance in the class-B rating.

The percentage of advance in these rates appears on the face of the figures rather drastic. The lower rates have been in effect for several years. But, looking at it from the other side, protestant has had the benefit of rates for a long time which were lower than any that we could prescribe as reasonable.

Protestant urges that under the advanced rates it can not sell in Utah. If this is so it is manifestly because of the natural advantages possessed by the Pacific coast manufacturer and of which he may not be deprived by the carriers or by the Commission. It is well settled that we may not make the needs of the shipper the basis for reasonable transportation rates. *So. Pac. Co. v. I. C. C.*, 219 U. S., 433.

Comparison of rates and of earnings per ton per mile are drawn between the rates to Denver and those to Utah. There is, however, no fixed or recognized relationship of those rates. The conditions of transportation and of competition between carriers may be and probably are different at Denver than at the Utah points.

We do not wish to minimize the earnestness of the protest, but it has not been forcefully supported. Neither do we desire to underestimate the value of Utah common point territory to protestant. The fact is, however, that the tonnage is inconsiderable. As stated, no protests have come from other points. On the other hand, the carriers have shown that they have brought these rates into line with western classification ratings, and, as stated, they are lower than those prescribed by us in the *Salt Lake case, supra*. In view of the exhaustive and extensive investigation made by the Commission in that case we are convinced that our findings therein were sound.

Under all the circumstances and conditions, we are of the opinion that the proposed rates are shown to be reasonable. Our order of suspension will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 94.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CHARGES BY CARRIERS FOR SWITCHING ICE IN CARLOADS AT CHICAGO, ILL., AND VICINITY.

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*Submitted July 15, 1912. Decided October 7, 1912.*

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Increased charges for delivery of ice in carloads at Chicago, Ill., found to be unjustly discriminatory. Withdrawal of protested tariffs required.

*Luther M. Walter* and *A. W. McLaren* for Morris & Company.

*H. G. Tewes* for Eagle Ice Company.

*O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

*Glennon, Cary, Walker & Howe* for Indiana Harbor Belt Railway Company.

*J. S. Connell* for Lake Shore & Michigan Southern Railway Company.

*H. H. Holcomb* for Chicago, Burlington & Quincy Railroad Company.

*P. F. Finnegan* for Baltimore & Ohio Chicago Terminal Railroad Company.

*James Stillwell* for Pennsylvania Lines.

*W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

*C. C. Wright* for Chicago & North Western Railway Company, intervener.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By its order of April 9, 1912, the Commission suspended to August 10, 1912, the effective date of supplement No. 2 to Chicago, Milwaukee & St. Paul Railway's tariff, I. C. C. No. B-2471, and by its order of July 30, 1912, that suspension was extended to February 10, 1913.

This suspension was for the purpose of investigating the reasonableness of certain increased charges for the transportation and delivery of ice at Chicago from different points in Wisconsin. The in-



creased charges were protested against by Morris & Company of Chicago.

The points of origin are grouped for rate-making purposes, and the groups include points in Illinois as well as points in Wisconsin.

From one group, in which Elk Horn, Burlington, Lyons, and Racine may be taken as representative, the rate to Chicago is 3 cents per 100 pounds. The average distance from Wisconsin points in that group to Chicago is about 75 miles.

From another group, of which Brookfield, Oconomowoc, and Waukesha may be taken as representative, the rate to Chicago is  $3\frac{1}{2}$  cents per 100 pounds, and the average distance from Wisconsin points is about 112 miles.

From another group, of which Beloit and Janesville may be taken as representative, the rate to Chicago is 4 cents per 100 pounds, and the average distance from Wisconsin points is about 107 miles.

Protestant's shipments apparently all move from the 3-cent group.

Somewhere about a year ago carriers, including the principal respondent, filed increased rates on ice from Wisconsin points to Chicago, and while the question of the reasonableness of those rates was pending before the Commission the carriers voluntarily withdrew the tariffs.

During the time that those proposed increased rates were pending before the Commission the carriers reaching Chicago from all directions agreed upon and established a so-called reciprocal switching arrangement in Chicago whereby the several carriers opened up their terminals to traffic both inbound and outbound moving over the lines of other carriers, under arrangements between the carriers by which they would handle originating freight and deliver received freight at any point in the Chicago switching district under a charge to the shipper of the flat Chicago rate, the carriers adjusting among themselves and paying to each other switching charges accruing in the Chicago district.

This arrangement provides that when the rate from or to Chicago is  $2\frac{1}{2}$  cents per 100 pounds or higher, and when charges are \$15 per car or over, Chicago rates will be applied, and that where the charges are less than \$15 per car the through charge from or to the industry shall be \$15 per car. It also provides that when the rate is less than  $2\frac{1}{2}$  cents per 100 pounds the charge shall be subject to a minimum rate of  $2\frac{1}{2}$  cents per 100 pounds on a minimum weight of 60,000 pounds per car.

For various reasons a few low-grade commodities, including ice, were excepted from the operation of this reciprocal switching arrangement. It appears that ice was excepted because the proposed increased rates to Chicago were, as stated, pending before the Commission. When the carriers withdrew those proposed increases the

eastern lines that make delivery of certain of such shipments insisted upon receiving from the western carriers that bring the shipments to Chicago their minimum allowance under the reciprocal switching tariff of 1 cent per 100 pounds, minimum weight 60,000 pounds per car.

Thereupon the tariff here considered was filed, and under it the charges to protestant for delivery on the tracks of the Lake Shore & Michigan Southern Railway were increased \$2 per car. The rates to Chicago were not changed. Under the existing tariffs these shipments are subject to the Chicago rate plus the \$2 per car switching charge of the Chicago Junction Railway and \$4 per car switching charge of the Lake Shore & Michigan Southern Railway, of which the Chicago, Milwaukee & St. Paul absorbs \$3 per car. Under the proposed tariff the Lake Shore switching charge is increased to the minimum provided in the reciprocal switching arrangement of \$6 per car and the Chicago, Milwaukee & St. Paul absorbs \$3 per car and requires the shipper to pay the increase of \$2 per car.

The proposed increase in the rates to Chicago, which was withdrawn, would have applied to all shippers of ice. Under the suspended schedule it appears that the increased charge would apply only to protestant. Other Chicago lines, for example the Chicago, Burlington & Quincy, accepted the Chicago reciprocal switching arrangement as to ice; in fact, it excepted only coal and grain. Of a long list of low-grade commodities, including brick, cinders, clay, coal, grain, gravel, sand, slag, stone, etc., the only commodity excepted by the Chicago, Milwaukee & St. Paul from the application of the reciprocal switching arrangement is ice.

The shipments of ice here involved are not shipments to packing houses or refrigerating plants, but are to distributing stations for domestic use. Similar increased charges were made by the Chicago & North Western Railway and the Minneapolis, St. Paul & Sault Ste. Marie Railway, but their tariffs were not protested against and were not suspended. The Chicago & North Western intervened in this case. It appears that about 1,600 cars of ice per year are affected by this increase. The average loading of these cars is 54,000 pounds. The average gross earnings are about \$16.20 per car.

The respondent that originates the shipments urges that the gross earnings are not sufficient to justify its absorbing more than \$3 per car. But it is to be noted that the lowest rate on this ice is 3 cents per 100 pounds, as compared with 2½ cents per 100 pounds fixed as the minimum in the reciprocal switching arrangement, and that the earnings are more than the \$15 minimum, also fixed in that arrangement. Protestant asserts, and we think with force, that if the rates are too low the carriers should have stood upon the question of reasonableness of increased rates to Chicago instead of withdrawing



the tariffs which proposed such increased rates, and thus have determined the reasonableness for all shippers instead of making the arrangement here considered, which effects an increase in the charges to protestant while no similar increase is provided for its competitors, of which there are many.

Eastern lines, respondents, including the Lake Shore & Michigan Southern, were represented at the hearing. Their position is that they are entitled to the minimum charge provided for them in the reciprocal switching arrangement.

May respondents reasonably except this ice from the reciprocal switching arrangement voluntarily entered into between the several carriers and pass along to protestant the additional charges to which the delivering carrier is entitled under that arrangement?

No question is presented as to the reasonableness of the reciprocal arrangement or of the minimum allowances provided thereunder. No evidence is presented with regard to the reasonableness or sufficiency of the transportation rates from points of origin to Chicago. Ice reaching Chicago from the south and west is included in the reciprocal switching arrangement. Only that which comes from the north and is delivered on what is called the south side in Chicago at stations for distribution for domestic uses is excepted.

Manifestly if the transportation rates on this ice to Chicago are too low and any increase in those rates is justified, it should be made in such manner as would not discriminate against shippers or receivers. Individual exceptions affecting only a part of the shippers or receivers should not be made in the reciprocal arrangement.

Upon the whole record we are of the opinion, and find, that the tariff under suspension is unjustly discriminatory against protestant, and that, except as to the minimum charges provided therein, respondents and intervener should apply their reciprocal switching arrangement in the Chicago district to shipments of ice from the interstate points of origin here considered in such way as not to effect increase in the charges on the shipments moving under said tariffs.

Respondents and intervener will be expected to at once cancel the tariffs in question. If this is not done, an order will be entered fixing the maximum charge for the future.

INVESTIGATION AND SUSPENSION DOCKET No. 108.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF BARLEY (WHOLE) IN CARLOADS FROM POINTS IN CALIFORNIA, NEVADA, AND UTAH TO MINNEAPOLIS, MINN., AND OTHER POINTS.

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*Submitted August 15, 1912. Decided October 8, 1912.*

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Proposed increase in the rate on barley from California points to Minneapolis via Omaha found to be unjustly discriminatory against Minneapolis and unduly preferential to Chicago.

*W. P. Trickett* and *T. A. McGrath* for Minneapolis Civic and Commerce Association, Traffic Division, protestant.

*R. H. Countiss*, *L. T. Wilcox*, and *H. A. Scandrett* for Southern Pacific Company; Atchison, Topeka & Santa Fe Railway Company; and Transcontinental Freight Bureau.

*T. J. Norton* and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

*CLARK, Commissioner:*

In September, 1911, a protest was filed against proposed increases in the rates on whole barley from points in California, Nevada, and Utah to the Missouri River and common points, including Minneapolis. The proposed increased rates were suspended by order of October 11, 1911. *Investigation and Suspension Docket No. 62*. Thereafter the proposed increased rates were canceled by the carriers and the order of suspension was vacated February 8, 1912.

Supplements 22 and 23 to transcontinental freight bureau tariff, I. C. C. No. 926, to become effective May 12, 1912, contained proposed increases in the same rates in the same amounts as previously, to wit, from 55 cents to 58 cents, California points to Minneapolis. On protest of the Minneapolis Civic & Commerce Association, these proposed increases were suspended by order of May 4, 1912, and by subsequent order until January 7, 1913.

All rates stated herein are in cents per 100 pounds.

The rate to Chicago direct via Omaha from the same points is 62½ cents, and no change in this rate is proposed. The rate from



Minneapolis to Chicago via Duluth and the lakes, or via all-rail, is 7½ cents.

Protestant alleges that the proposed increase in the Minneapolis rate is unreasonable. The principal reason for the protest, however, and the principal objection thereto is that in the absence of increase to Chicago it effects a reduction in the differential Minneapolis under Chicago to 4½ cents, thus resulting in alleged unjust discrimination against Minneapolis and undue advantage to Chicago.

Prior to June 8, 1911, the rate from the originating territory in question to Chicago was 65 cents, and it is stated that:

With the object of protecting the direct haul to Chicago, Milwaukee and common points, the Western Trans-Continental lines \* \* \* reduced the through rate from California to Chicago, Milwaukee and common points from 65 cents to 62½ cents per 100 pounds, being the same as the combination of the 55-cent rate in effect from California to St. Paul and Minneapolis and the 7½-cent rate thence to Milwaukee.

The tariff above designated authorizes transit privileges on barley at numerous points east of the Mississippi River as same are provided in the tariffs of the individual lines, but it is stated that malting in transit is not permitted thereunder.

With the object of preventing malting at Minneapolis, which, under the present adjustment of rates, is in effect and in fact malting in transit, the increase in the rate from California to Minneapolis was proposed, because thereby the combination of the 58-cent and 7½-cent rates would be greater than the through rate of 62½ cents to Chicago.

Minneapolis draws barley from Minnesota, South Dakota, North Dakota and the Pacific coast. It is only when there is a shortage of crop in the three states named that barley comes to Minneapolis from the Pacific coast. The proposed advance affects rates from California, Nevada and Utah, but no change has been made in the rates from Oregon, Washington and Idaho. The rates on barley from these states are 50 cents to Minneapolis; 57½ cents to Chicago. In 1911 when the Minnesota and North Dakota crops were short, Minneapolis drew 3,500,000 bushels of barley from California. The record does not show how much was obtained from Washington, Oregon, and Idaho.

Respondents submitted an exhibit of distances, rates per 100 pounds and rates per ton per mile from various barley originating points to numerous consuming markets in order to compare them with the rate per ton per mile from Sacramento, a representative California barley-shipping point, to Minneapolis. The short-line distance from Sacramento to Minneapolis via Omaha is 2,041 miles, which, at the rate of 55 cents, yields 5.389 mills per ton per mile, which is among

the lowest rates per ton per mile shown in the exhibit. The rate per ton per mile on barley from Sacramento to Chicago via the short line is 5.7 mills. Applying that figure to the Minneapolis short-line mileage produces a rate of 58 cents.

In *Investigation of Advances in Rates on Grain*, 21 I. C. C., 22, the Commission said: "On no traffic, except it be lumber, are per-ton-per-mile earnings more helpful than on grain." But if serious consideration is given to the earnings per ton per mile as a basis of comparison, manifestly it must be in a logical and nondiscriminatory way. Looking therefore to the rates on barley which defendants make or participate in, we find that the rate of 50 cents from Washington or Oregon points to Minneapolis applies not only via the direct lines of the northern routes but also via Omaha over the lines of the Union Pacific and its allied properties. Via this route the short-line distance is 2,068 miles from The Dalles, Oreg., to Minneapolis, and the rate per ton per mile is 4.8 mills. It is well known that these transcontinental rates apply from large territories of origin and to wide territories of destination. For that reason many different rates per ton per mile can be figured from them. The rate per ton per mile from Sacramento is not the same as from some other point of origin from which the 55-cent rate to Minneapolis and the 62½-cent rate to Chicago also apply. The transcontinental rates are not made upon any basis of equal rates per ton per mile to or from equidistant points.

The divisions of the rates in cents per 100 pounds accruing to the various lines are as follows:

Rate.	Lines west of Missouri River.	Lines east of Missouri River.
55	48.1	6.9
58	50.8	7.2
62½	53.9	8.6
65	56	9

The direct route to both Minneapolis and Chicago from the California points is through Omaha. It can readily be seen, therefore, that the carriers west of the Missouri River prefer that the traffic should move direct to Chicago at the through rate of 62½ cents rather than it should be transported via Minneapolis.

The distance from Sacramento to Chicago via Minneapolis is 264 miles greater than via the direct line between Sacramento and Chicago. Respondents contend that it is manifestly unfair for protestant to insist on the maintenance of a rate which compels the diversion of the traffic 264 miles off of the direct line in order to enable the Minneapolis operator to sell to Chicago at the same rate at which Chicago can buy direct. It is also stated that this circuitous route



involves a stoppage and unloading at Minneapolis, a reloading and a transit privilege between Minneapolis and Chicago. The carriers contend that the Commission should not compel this economic waste.

Differences in distance of much more than 264 miles are frequently disregarded under the blanket plan of making transcontinental rates. The rates of 55 cents to Minneapolis and 62½ cents to Chicago apply from points in California that are as much as 277 miles beyond Sacramento. The divisions of the rates are matters of agreement and bargain between the carriers. The 7½-cent rate from Minneapolis to Chicago is a voluntarily established rate in the making of which the lines west of the Missouri River had little or no part. The same is true of the transit privileges that are granted under that 7½-cent rate. Obviously there is economic waste in every unnecessary unloading. Every transit privilege costs the carriers granting it something. The real question here, however, is that of discrimination against Minneapolis. The 7½-cent rate from Minneapolis applies to other grains than barley. It has been in effect for a long time. It has proven troublesome in more than one grain-rate adjustment. It doubtless had its origin in competition of the all-rail lines with the rail-and-lake lines, and perhaps in competition between the all-rail lines themselves. The reasons for its establishment and the commercial conditions affected by it have caused its continuance. It is there for any shipper to use and no good reason appears why its use should, in the manner proposed in the tariff in question, be prohibited as to California barley while still open to other grains, and to barley from Washington, Oregon and Idaho, transported by respondents.

There is a movement of barley from California via the Isthmus. It was testified that the rate via that route to New York is 35 cents, but it was also stated that it goes as low as 25 cents.

A statement of the movement of barley from California by sea to Atlantic Seaboard was submitted, which shows 2,752 tons in 1910; 51,024 tons in 1911 and 91,900 tons in 1912 up to April 30. In 1910 there was no rail movement via the Southern Pacific to Chicago, Mississippi River territory, or Missouri River territory. In 1911 the movement was, in tons, to Chicago, 12,386; to St. Louis, 2,378; to Missouri River, 13,852. For 1912 to April 30, in tons, to Chicago, 52,094; to St. Louis, 2,348 and to Missouri River, including St. Paul, Minneapolis, and Duluth, 26,581.

Some light may be gained by reference to rates on other articles. Wheat, rye, oats, rice, and sugar, take rates of 55 cents to Minneapolis from California. The rate on the first three to Chicago is 65 cents; on rice and sugar it is 60 cents. The westbound rate on bran and shorts from Minneapolis to California is 55 cents; from Chicago it is 60 cents.

Western barley is not equal in quality to middle west barley and therefore, as before stated, it is only during periods of crop shortage in the territories from which Minneapolis draws barley that it seeks to obtain barley from the Pacific coast. The interior malsters in southwestern Minnesota and Wisconsin depend on Minneapolis for their supply of barley. In some instances the barley can be shipped direct from the fields to the malster, but generally speaking the proper mixture to meet his requirements can only be obtained from the terminal market. The terminal market is therefore essential in order that the malster may purchase barley of uniform quality, which can only be obtained by mixing. The interior malsters in Wisconsin and Minnesota, although on the direct route to Chicago, can not get their supply in Chicago because they would be compelled to pay the local rate from Chicago on the barley and the local rate back on the malt. Obtaining barley from Minneapolis the interior malster has the privilege of malting in transit on the  $7\frac{1}{2}$ -cent rate, and can put his malt in Chicago on an equality with the Chicago operator.

In their brief respondents contend:

(a) That the 55-cent rate is low, unremunerative, and water compelled.

(b) That the 58-cent rate is not unreasonable when considered in relation to the rate to Chicago.

(c) That inasmuch as the advance applies only from California, Minneapolis' natural territory, i. e., Oregon, Washington, Idaho, Minnesota, North and South Dakota is not disturbed.

(d) That the reduction in the rate to Chicago was to prevent the defeat of the through rate to Chicago, and the increase in the rate to Minneapolis was to give the lines to Chicago the benefit of the direct haul.

(e) That the rate of 50 cents from Washington, Oregon, and Idaho to Minneapolis was made by the northern lines, the termini of which are either Minneapolis or St. Paul, and that competitive conditions with the northern lines which run through St. Paul on a direct route to Chicago differentiates the  $57\frac{1}{2}$ -cent rate to Chicago from the rate from California. In addition, it is alleged that on account of the difference in conditions, the  $7\frac{1}{2}$ -cent differential on barley from North Pacific coast affords no predicate that the same differential should be maintained on California traffic.

(f) That the  $7\frac{1}{2}$ -cent differential is not a constant factor, varying in South Dakota from  $7\frac{1}{2}$  to 5 cents, and that the closer a point is to the direct line from Sacramento to Chicago the less the differential in favor of Minneapolis.

To these contentions it seems proper to say:

(a) The 55-cent rate is not shown to be unremunerative, and we can not so consider it in view of the voluntarily established rates on similar commodities that are no higher, and in view of the fact,



shown by the tariffs, that respondents join in the application of the 55-cent rate on barley from some California points, including Sacramento, to Minneapolis via Portland, Oreg., the distance from Sacramento to Minneapolis being 2,747 miles.

(b) The increased rate must be shown to be reasonable and proper.

(c) Carriers may not determine by arbitrary rate adjustments that one market shall have a certain territory and another market a certain other territory. Every market and every shipper has a right to go as far as reasonable and nondiscriminatory rates will carry.

(d) The through rate to Chicago is the same via Minneapolis and via the direct lines.

(e) As we understand it, the northern transcontinental lines had about as little to do with establishing the  $7\frac{1}{2}$ -cent rate from Minneapolis to Chicago as did the central transcontinental lines.

(f) The competitive conditions between carriers from South Dakota, where several carriers have their own lines to Minneapolis, Duluth, Chicago, and Milwaukee, result in direct rates to Chicago which may or may not be  $7\frac{1}{2}$  cents higher than to Minneapolis.

The position of the protestant is that an advance in the rate to Minneapolis of 3 cents and a lessening of the  $7\frac{1}{2}$ -cent differential by that amount would inevitably result in shutting California barley out of the Minneapolis market. A million-bushel malting plant at Minneapolis is equipped to handle California barley exclusively. In order to use California barley it is not necessary that the machinery in the mill be changed, but simply that it be cleaned and a different process used.

The situation is succinctly stated in letter of October 26, 1910, from agent Countiss of the transcontinental freight bureau to the chairman of the Commission, which was filed as an exhibit in this proceeding. He states that the 55-cent rate was established many years ago to move barley from California to the Missouri River markets in competition with barley produced in other sections; that the former reduction in the rate to Chicago from 65 cents to  $62\frac{1}{2}$  cents was for the purpose of preventing rate manipulations by making the direct rate to Chicago the same as the combination of rates via Minneapolis, and that the present proposed increase in the rate to Minneapolis is for the purpose of preventing the malting at Minneapolis to which we have previously referred.

The act gives the Commission power to inquire into the propriety of an advance. In *Investigation of Advances in Rates on Grain, supra*, we held that it is the duty of the Commission to determine the reasonableness of the advances, and their propriety as well. In *In the Matter of the Investigation and Suspension of Advances in Rates by Carriers for the Transportation of Cement in Carloads from Union Bridge, Md., to Norfolk, Va., and other destinations*, 24

I. C. C., 290, which arose from a change in the relationship of rates between Union Bridge and Security, Md., the Commission found that the proposed rates unjustly discriminated against Union Bridge to the undue advantage of Security, ordered their cancellation and the maintenance of the relation then existing.

We appreciate that the 55-cent rate is competitive and that it is perhaps influenced by water competition; but can less be said of the Chicago rate?

An important feature in the premises is the avowed intention on the part of respondents in connection with the reduction to Chicago and the proposed increase to Minneapolis. They were expressly made to divert the traffic to Chicago. Generally speaking, the intent behind a rate change is of small concern to the Commission: the effect of the change is the matter over which it has jurisdiction. In this instance the effect must necessarily follow the intent. It was not because the rate was unremunerative that the change was proposed. It is not stated to have been for the purpose of securing needed revenue or of offsetting increased operating costs. The sole purpose was, as has been stated, to change the relationship between Minneapolis and Chicago. That a lowering of the differential would result to the advantage of Chicago and the disadvantage of Minneapolis can not be disputed. Unquestionably rates per ton per mile are helpful, but if they were applied arbitrarily on traffic from the Pacific coast, using the Chicago rates as a basis, there would be a serious derangement in the present rate structure.

From a careful review of the whole record we are of the opinion that the proposed advance has not been shown to be reasonable, or to be free from unjust discrimination against Minneapolis to the undue advantage of Chicago. Some of the factors in the Minneapolis combination are more or less directly involved in other proceedings before us. So long as they are not changed we think that the present arrangement of rates on barley from California via Omaha  $7\frac{1}{2}$  cents less to Minneapolis than to Chicago should be continued. We shall expect respondents to at once cancel the increased rates to Minneapolis, and if that is not done we will enter an order fixing the relationship for the future.

24 I. C. C.



No. 4760.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted June 21, 1912. Decided October 7, 1912.*

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The advance in the lemon rate from \$1 to \$1.15 per 100 pounds from points in California to points in Oregon, Washington, and Idaho has not been justified by the carriers. The \$1 rate found reasonable and prescribed for the future. Reparation awarded.

*A. F. Call, and Cassoday, Butler, Lamb & Foster* for complainants.  
*C. W. Durbrow, A. S. Halsted, H. A. Scandrett, and E. W. Camp* for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Rates on lemons from California to what may be termed eastern destinations were considered in *Arlington Heights Fruit Exchange v. S. P. Co.*, 19 I. C. C., 148, and 22 I. C. C., 149. The rates from California to Montana, North Dakota, and some other western points were considered in *Investigation & Suspension docket No. 69*, 23 I. C. C., 27. The records in these cases are stipulated into the instant case.

The rates from California to points in Oregon, Washington, and Idaho would have been included in the complaint in *Investigation & Suspension docket No. 69, supra*, had it not been that complainants overlooked the fact that said rates were carried in a separate tariff.

For several years prior to December 9, 1911, defendants' rates on lemons in carloads from producing points in California to points in Washington, of which Spokane may be taken as representative; to points in Oregon, of which Pendleton may be taken as representative; and to points in Idaho, of which Wardner may be taken as representative, were made up of combinations of local rates from points of origin to San Francisco, Sacramento, Stockton or some other California terminal, plus the rates from such terminal point to destination, with the provision that if such combination exceeded \$1 per 100 pounds, the total through rate would be \$1 per 100 pounds.

On December 9, 1911, defendants issued, in Supplement No. 8 to Southern Pacific tariff, I. C. C. No. 3128, a provision that the combination rates would apply except where they exceeded \$1.15 per 100 pounds, in which event the total through charge would be \$1.15 per 100 pounds.

Complainants allege that these rates from the California points of origin to the destinations in Oregon, Washington, and Idaho, as shown in said Southern Pacific tariff, I. C. C. No. 3128, are unjust and unreasonable to the extent that they exceed on any shipment a total through charge of \$1 per 100 pounds.

Nothing is presented in the instant case which is persuasive against the conclusions reached in *Investigation & Suspension docket No. 69, supra*. The rates to Portland, Oreg., and Tacoma and Seattle, Wash., and perhaps to other so-called North Pacific coast terminals are lower than the rates complained of and are not here in issue.

Defendants' showing of adverse grades and difficult transportation conditions on the Southern Pacific Company's line to Portland is substantially the same as that presented in *Investigation & Suspension docket No. 69*. It appears that during the period of one year from November 1, 1910, out of a total of 80 carloads of lemons moved under the rates complained of, 70 cars moved to Spokane. These shipments moved to Spokane via the Northern Pacific from Portland, although it is shown that via the Spokane, Portland & Seattle road the distance is shorter by 163 miles.

Defendants' principal witness admits that there is no reason why the rates to Spokane should be higher than to Montana points except that the Commission ordered a reduction in the Montana rates. These lemons move under ventilation and with no special or expedited train service. Under existing tariffs lemons are carried from California to Montana points via Portland, Oreg., and Spokane, Wash., at the rate of \$1 per 100 pounds.

We will not repeat the reasons announced as controlling in *Investigation & Suspension docket No. 69, supra*. The instant case is controlled by those conclusions. The rates complained of were increased subsequently to January 1, 1910, and therefore the burden is upon defendants to show that the increased rates are just and reasonable. We do not think that such showing has been made, and, upon consideration of the whole record, we are of the opinion, and find, that the advanced rates have not been justified by defendants; that rates not exceeding \$1 per 100 pounds would be reasonable between the points involved; and that such rates should not be exceeded for the future. If collapsible bunker cars are presented for loading, with the bunkers thrown up, carriers may provide in their tariffs for such carload minima as will require the loading of such cars to their full capacity, not however exceeding two tiers in height.



Reparation is prayed for upon all shipments upon which rates in excess of \$1 per 100 pounds have been collected by defendants. As has been stated, but for complainants' oversight these rates would have been included in *Investigation & Suspension docket No. 69, supra*, and there is no reason to believe that if they had been so included they would not also have been included in the conclusion there reached. We are of the opinion, and find, that complainants are entitled to reparation on shipments moving under the rates complained of subsequently to December 8, 1911, for all charges on any shipment in excess of \$1 per 100 pounds. Complainants may present to defendants a detailed statement of such shipments and upon presentation of such agreed statement the Commission will enter the proper order for reparation.

An order will be entered in accordance with these conclusions and the case will be held open for such further order or proceedings as may be necessary in the matter of reparation.

No. 3993.

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK  
ET AL.

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD  
COMPANY ET AL.

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*Submitted April 10, 1912. Decided October 14, 1912.*

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Prior decision herein, in regard to import rates from Boston and New York and rates over certain differential lines, explained and modified.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The original report in this case is in 24 I. C. C., 55. No order was entered. It now appears from further investigation that some modification of the original findings is proper and necessary.

At page 77 of the original report, we said:

We are of the opinion that differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadelphia should not exceed 2 cents per 100 pounds on the classes and commodities other than grain. On all-rail and lake-and-rail export shipments of grain the differentials under New York should not exceed 1.5 cents per 100 pounds to Baltimore and 1 cent per 100 pounds to Philadelphia.

It was not the intention to change the differentials on flour for export. Nothing was said in the hearings as to export rates on iron articles, and it was not intended to change the differentials thereon. That portion of the original report above quoted is therefore hereby modified so that it will read:

We are of the opinion that differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadelphia should not exceed 2 cents per 100 pounds, on the classes and on commodities other than grain, flour, and iron articles. On all-rail and lake-and-rail shipments of grain the differentials under New York should not exceed 1.5 cents per 100 pounds to Baltimore and 1 cent per 100 pounds to Philadelphia. On all-rail and lake-and-rail export shipments of flour the differentials under New York should not exceed 2 cents per 100 pounds to Baltimore and 1 cent per 100 pounds to Philadelphia.



The present export differentials on iron and steel articles, under New York to Baltimore and Philadelphia, respectively, from representative points are generally as follows: From Chicago and Chicago rate points, to Baltimore, 3 cents per 100 pounds where rates are stated per 100 pounds, and 60 cents per ton, net or gross, where rates are stated per ton; to Philadelphia, 2 cents per 100 pounds where rates are stated per 100 pounds, and 40 cents per ton, net or gross, where rates are stated per ton. From Detroit and points taking the same rates, to Baltimore, 3 cents per 100 pounds where rates are stated per 100 pounds, and 55 cents per ton, net or gross, where rates are stated per ton; to Philadelphia, 2 cents per 100 pounds where rates are stated per 100 pounds, and 40 cents per ton, net or gross, where rates are stated per ton. From Pittsburgh and points taking the same rates, from Cleveland and points taking the same rates, and from Youngstown and points taking the same rates, to Baltimore, 1.5 cents per 100 pounds where rates are stated per 100 pounds, and 30 cents per ton, net or gross, where rates are stated per ton; to Philadelphia, 1 cent per 100 pounds where rates are stated per 100 pounds, and 20 cents per ton, net or gross, where rates are stated per ton. These differentials should not be exceeded.

There are other points of minor importance from which the export differentials on iron and steel articles are somewhat different from those which we have named. Without specifying such points, it is sufficient to say that those differentials should not be made greater than they are.

In the original report, page 77, we found that the import rates from Boston should not be lower than from New York, and in *In the Matter of Import Rates*, 24 I. C. C., 78, we decided that they should be the same. We are now asked as to what import rates should apply from Boston, in view of the fact that there are certain differential lines, respectively, from Boston and New York.

The standard all-rail rates from New York are the same on both domestic and import shipments. The same is true as to the standard rail-and-lake rates and as to the ocean-rail-and-lake rates via New London, Conn., and the Canada Atlantic lines. The standard all-rail domestic rates from Boston are the same as from New York, and the same is true as to the standard rail-and-lake domestic rates. The domestic ocean-and-rail rates from Boston via Philadelphia, Baltimore, Norfolk, or Newport News are higher than the domestic ocean-and-rail rates from New York via Norfolk or Newport News.

Adhering to our original finding as to the general relationship of import rates from Boston and New York, but modifying and giving more specific application thereto, we hold that via the standard all-rail lines, the standard rail-and-lake lines, and the ocean-and-rail lines via Philadelphia, Baltimore, Norfolk, or Newport News, the import rates from Boston should not be lower than from New York.

There is a differential ocean-and-rail route from New York via New London, Conn., and the Central of Vermont and Grand Trunk roads. Via this route the domestic class rates to Chicago are on a scale of 65 cents, and the import rates are on a scale of 62 cents,

first class. If this route is open or opened to import traffic from Boston, import rates from Boston should not be lower than from New York.

There is a differential river-rail-and-lake line from New York via the Hudson River, the Rutland Railroad, and the lakes. There is no route from Boston that is fairly comparable with this one. Via this route the domestic and import class rates to Chicago are on a scale of 52 cents, first class. We do not understand that this route is open to Boston traffic, but if it should be, the import rates from Boston should not be lower than from New York.

There is a differential route from New York, river-canal-and-lake, via the Hudson River, the Erie Canal, and the Lakes. There is no similar route from Boston. Via this route the domestic and import class rates to Chicago are on a scale of 42 cents, first class. We do not understand that this route is open to Boston traffic, but if it should be, the import rates from Boston should not be lower than from New York.

There are differential rail routes from Boston via the Boston & Maine and Boston & Albany roads in connection with the Canadian Pacific and National Despatch lines. Via these routes the domestic class rates to Chicago are on a scale of 70 cents, first class, and at the present time the import rates are the same as from Baltimore. The New York, New Haven & Hartford and Canadian Pacific Despatch publish the same scale of import rates, but not the same domestic scale.

The domestic rates via the Boston & Maine and Boston & Albany roads, in connection with the Canadian Pacific and National Despatch lines, being on a recognized differential scale, it is obvious that if these routes did not publish any import rates the domestic rates would be available on import shipments if such traffic were cleared at Boston. We see no reason for imposing that additional trouble upon the shippers and we hold that via these routes the import rates from Boston may be the same as the domestic rates.

There is a differential rail-and-lake route from Boston via the Boston & Maine, Grand Trunk, and Canada Atlantic Transit Company's lines through Depot Harbor which publishes domestic class rates to Chicago on a scale of 57 cents, first class. There is no route from New York that is exactly comparable with this one. The domestic rates via this route being recognized differentials under the standard rail-and-lake rates, we see no reason why import shippers should be obliged to clear their traffic at Boston in order to avail themselves thereof, and we hold that via this route the import rates from Boston may be the same as the domestic rates.



All that we have said as to the relationship of import rates as between New York and Boston applies to both class and commodity rates.

As stated in the original report, the understandings and submission filed in *In the Matter of Import Rates, supra*, were relied upon to bring about a prompt adjustment of the rates in conformity with the views which we expressed, and no order was issued. As hereinbefore indicated, differences of opinion arose as to just what changes it was intended to effect. It was not possible at that time to bring the matter before the full Commission, and the parties were therefore advised to hold the readjustment in abeyance until the Commission could give it further consideration. We understand that defendants are now prepared to adjust the rates in conformity with our findings, and will therefore not now enter an order. It is a common practice for the shippers to make yearly contracts with ocean steamship lines on their import traffic. It was understood in *In the Matter of Import Rates, supra*, that our decision would not fix an effective date that would interfere with such yearly contracts. Pursuant to that understanding and to what we believe to be the best interests of all concerned, we shall now expect the carriers to make their readjustments under our findings effective on January 1, 1913, and on not less than 15 days' notice to the Commission and to the public in the manner required by law.

24 I. C. C.

No. 3780.

## IN THE MATTER OF IMPORT RATES.

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*Submitted April 10, 1912. Decided October 14, 1912.*

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Prior decision herein modified upon the findings in *Chamber of Commerce case*, ante, p. 674.

Appearances same as in original report.

### SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The original report in this case is in 24 I. C. C., 78. We there held that the import rates from Boston should be the same as from New York. Questions were raised as to what import rates should apply from Boston in view of the fact that there are certain differential lines respectively from Boston and New York. It was not possible at that time to bring these questions before the full Commission and the parties were therefore advised to hold the readjustment in abeyance until the Commission could give them consideration.

We have considered this question in supplemental report in *Chamber of Commerce of the State of New York v. N. Y. C. & H. R. R. R. Co.*, 24 I. C. C., 674. Applying to the instant case findings there made, we decide:

(a) That via the standard all-rail lines and the standard rail-and-lake lines the import rates from Boston should be the same as from New York.

(b) That if the New York differential ocean-and-rail route via New London, Conn., and the Central of Vermont and Grand Trunk roads is open or opened to import traffic from Boston, the import rates from Boston should be the same as from New York.

(c) That via the differential rail routes from Boston via the Boston & Maine and Boston & Albany roads in connection with the Canadian Pacific and National Despatch lines, the import rates from Boston may be the same as the domestic rates.

(d) That via the differential rail-and-lake route from Boston via the Boston & Maine, Grand Trunk, and Canada-Atlantic Transit Company's lines through Depot Harbor, the import rates from Boston may be the same as the domestic rates.



All that we have said as to the relationship of import rates as between New York and Boston applies to both class and commodity rates.

For the reasons stated in supplemental report in *Chamber of Commerce of the State of New York v. N. Y. C. & H. R. R. Co.*, *supra*, we here decide that the readjustment of import rates in accord with our findings shall be made effective January 1, 1913, and on not less than 15 days' notice to the Commission and to the public in the manner required by law.



No. 3314.

CRUTCHFIELD & WOOLFOLK

v.

SOUTHERN PACIFIC COMPANY.

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*Decided October 14, 1912.*

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Rehearing is asked for the reason that complainants are not entitled to damages because they are commission men, but it appears that complainants were under obligation to pay these freight charges, and were, therefore, upon the face of the transaction the only parties who could maintain suit for an overcharge or an excessive rate. Petition denied.

*C. W. Durbrow, J. G. Wilson, and H. A. Scandrett* for Southern Pacific Company, petitioner for rehearing.

#### REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

PROUTY, *Chairman*:

The defendant moves for a rehearing in the above case (*ante*, p. 651) for the reason that the complainants are not entitled to the damages found to have accrued inasmuch as they are simply commission men. The claim is that the shippers on whose account the complainants handle melons are the proper parties to maintain this proceeding.

The record shows that Crutchfield & Woolfolk handled these melons for certain growers in California under a written contract. By the terms of this contract they were styled "distributing agents." They received for their compensation a commission, but their relation to the transaction was not altogether that of the ordinary commission merchant.

By the terms of this contract it was their duty to pay the freight, and it was provided that when the melons did not sell for a sufficient amount to cover the freight charges, which these complainants covenanted to pay, no claim should be made by them upon the shipper. It may be, therefore, that these complainants are the only persons interested in any deduction from the freight charges which they have been compelled to pay with respect to certain carloads.

The contract further provided that when shipment was made and before the melons were disposed of a cash advance should be made by the complainants to the shipper, and the testimony was that as a practical matter no portion of this cash advance was ever recovered, even though the shipment did not sell for a sufficient amount to pay freight charges and the advance. It was said in testimony that for the year 1908 the complainants lacked about \$18,000 of getting back the amount of these advances.

The testimony did not show that any final settlement had been made by the complainants with the growers under these contracts.

We have held that where a commission merchant who pays the freight in the first instance has settled with his principal, who, by the terms of that settlement, has paid the freight charges, such commission merchant has no further interest in the transaction, and is not a proper party to maintain a proceeding for the recovery of reparation. But it must appear that the account has been closed; that the freight has been in fact paid by the principal; and that the interest of the commission merchant has been extinguished.

Here it appears that Crutchfield & Woolfolk were under obligation to pay these freight charges and were therefore, upon the face of the transaction, the only parties who could maintain suit for an overcharge or an excessive charge. It does not appear that they have finally settled with their principals with respect to any of these shipments. The petition for rehearing is therefore denied.



No. 4219.  
E. W. PARKER  
v.  
SOUTHERN PACIFIC COMPANY ET AL.

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*Submitted July 1, 1912. Decided October 7, 1912.*

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The time limit on the going portion of excursion tickets to San Francisco had expired before passengers arrived at Portland, en route to San Francisco: *Held*, That the additional fares from Portland to San Francisco were properly assessed; that they are not shown to have been unjust or unreasonable; and that the facts and circumstances of this case do not justify an amendment of rule 69 of Tariff Circular 18-A.

*Rufus B. Daniel* for complainant.

*E. W. Clapp* for Southern Pacific Company.

*J. R. Christian* for Galveston, Harrisburg & San Antonio Railway Company.

*Turney & Burgess* and *W. R. Brown* for Rio Grande & El Paso Railroad Company and Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a resident of El Paso, Tex. By petition, filed July 7, 1911, he alleges that excessive and unreasonable charges were exacted of him by defendants for the transportation of himself and wife from Portland, Oreg., to San Francisco, Cal. The claim was first presented to the Commission March 18, 1911. Reparation is asked.

On or about May 31, 1909, the complainant purchased of the agent of the Atchison, Topeka & Santa Fe Railway Company at El Paso, Tex., for the use of himself and wife, two first-class limited summer excursion tickets to San Francisco and return. The routing was over the line of the Santa Fe, Denver & Rio Grande, Oregon Short Line, Oregon Railroad & Navigation Company, and Southern Pacific to San Francisco, thence returning via Southern Pacific and Santa Fe. Under the terms and conditions of these tickets the going time to San Francisco was limited to October 20, but for the return trip from San Francisco they were good until October 31.

En route to Portland, the complainant and his wife, under privileges lawfully extended by the carriers, stopped off at Boise, Idaho, to visit their daughter, who was ill. Detained some time by the illness of their daughter, who was not traveling with them, but was a resident of the vicinity of Boise, the complainant and his wife did not resume their journey until October 22—after the going limit to San Francisco had expired. The tickets were honored, however, to Portland, and no question of their validity was raised until they were presented to the agent of the Southern Pacific at Portland, with request for sleeping-car accommodations to San Francisco. After examination of the tickets, the agent informed the complainant that the tickets could not be further honored for transportation to San Francisco, and complainant was compelled to purchase two tickets from Portland to San Francisco, at a cost of \$20 each. The fares from Boise to Portland, which should have been charged by the carrier, by reason of the expiration of going time limit on the excursion ticket, were \$15.15 each.

The tariff under the provisions of which the tickets were issued contained the following rule:

Going transit limit October 20, 1909. Time limit October 31, 1909. Stop-over will be allowed on going trip at any point, but not beyond October 20th, by which time destination must be reached.

In case of illness of a holder of a ticket or of an accompanying member of the family of a holder, stop-over may be granted and limit of such ticket or tickets extended by exchange or otherwise, as may be necessary, after passenger has sufficiently recovered to resume journey.

This rule was doubtless incorporated in the tariff upon authority of a permissive ruling of the Commission issued in November, 1907, now carried as rule 69 of Tariff Circular 18-A. The extension provided for in the rule applies only in the case of illness of a passenger, and further that—

Only such illness as makes travel dangerous to the health of the *passenger* will justify the extension herein provided for.

The complainant admits that the terms and conditions printed on the tickets were not read by him until his attention was called to them by the agent at Portland, and that they were then very clear. The rule plainly does not contemplate the granting of a stop-over or the extension of the time limit under circumstances disclosed by this case. The charge complained of, and for which reparation is sought, was properly assessed in accordance with defendant's published tariff, and we can not find that it was in any wise unjust or unreasonable. To grant the relief sought for in the petition would involve a stretching of the rule so as to provide for an extension of the time limit or stop-over privilege upon contingencies happening



not to the traveler himself, but to some third party. We are of the opinion that the rule should not be so extended. It follows, therefore, that the complaint must be dismissed. An order will be entered accordingly.

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INVESTIGATION AND SUSPENSION DOCKETS NOS. 101 AND 101-A.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF LOGS AND BOLTS INTO NASHVILLE, TENN., AND OTHER MILLING POINTS LOCATED ON THE LOUISVILLE AND NASHVILLE RAILROAD.

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*Submitted July 25, 1912. Decided October 14, 1912.*

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It appearing that the Louisville & Nashville is willing to change the tariffs in question so that they will provide for transit rates on 3 pounds of logs shipped in for each pound of dried lumber, dressed or rough, shipped out, and to make the limit of the transit privilege 12 months, the order of suspension issued herein will be vacated when the supplements making such change have been filed with the Commission.

*W. M. Farris, jr.*, for Cherokee Lumber Company.

*A. B. Ransom* for John B. Ransom Company.

*Henderson Baker* for Baker, Jacobs & Company.

*D. M. Goodwyn* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Upon protest from the Nashville Lumbermen's Club of Nashville, Tenn., and by order of April 24, 1912, Louisville & Nashville Railroad Company's tariff, I. C. C. No. A-12190, was suspended to August 27, 1912. By that same order the same company's tariffs, I. C. C. Nos. A-12177, A-12178, A-12182, and A-12186, were suspended because they involved the same question at other points. For the same reason the same company's tariffs, I. C. C. Nos. A-12198 and A-12201, were suspended to August 27, by order of May 17, 1912. By subsequent order of June 3, 1912, the suspensions were continued to February 27, 1913.

24 I. C. C.

The Nashville Lumbermen's Club objected to the tariff on the specific ground that it provided that for each pound of rough lumber shipped out transit rates would be applied to 2 pounds of inbound logs, whereas for a substantial period theretofore transit rates had been allowed on 3 pounds of inbound logs for 1 pound of rough lumber outbound.

At the hearing it developed that the Louisville & Nashville, having revised all of its transit arrangements on grain and grain products, took up similar revision of its transit rules applying to forest products. An investigation was made as to the necessity for transit rates and rules at various points on that company's lines, which developed that approximately one-third of those in existence were no longer used or needed.

Preparatory to the hearing in the general transit investigation in March last, new transit circulars on lumber were issued applicable at three important points where they would be used, to wit, Nashville, Memphis, and Louisville.

It appears that unintentionally, due to reference to a circular applicable to transit on pine and where the lumber is shipped green, the provision was incorporated that for each pound of rough lumber shipped out, transit rates would be allowed on 2 pounds of logs shipped in. A general traffic officer of the Louisville & Nashville testified that they had discovered this mistake and arranged to correct it by supplement before the tariff was suspended. The suspension of the tariff prevented supplementing it. It appears that at other points on the Louisville & Nashville the rules provide for transit on 2 pounds of logs shipped in for 1 pound of green lumber shipped out, and on 3 pounds of logs shipped in for 1 pound of dry lumber shipped out. The representative of the Louisville & Nashville stated in the record that it was the purpose to make a fixed proportion for the entire line of three to one on dried lumber, whether rough or dressed, and that was declared by protestants' representative to be satisfactory.

The witness was under the impression that as to some of these tariffs the transit limit had been fixed at six months, and said that if so the arrangement for supplementing or reissuing these tariffs, which was in hand at the time they were suspended, included a restoration of the time limit of 12 months. He expressed not only willingness but an intention to grant the 12-months' limit uniformly, which was declared by protestants' representative to be entirely satisfactory.

The major part of the hearing was taken up with discussion of substitution of tonnage at transit points, and of transit rules, reports thereunder, and policing thereof, which was participated in by protestants and by lumber dealers from other points who had not pre-



viously intervened. That discussion would be pertinent in the general transit investigation and will be considered in that connection. Here we will deal only with the point specified in the protest and the change that caused suspension of the tariffs.

The record shows that the Louisville & Nashville is willing to change the tariffs in question so that they will provide for transit rates on 3 pounds of logs shipped in for each pound of dried lumber, dressed or rough, shipped out, and to make the limit of the transit privilege 12 months, and that this is satisfactory to protestants.

So long as these tariffs are under suspension the points at which they were intended to apply are at an advantage as compared with other points where the rules were made effective. That situation should be corrected at once.

Respondent should promptly tender for filing supplements to or reissues of the tariffs suspended and hereinbefore specified, providing for the uniform application of the intentions announced at the hearing and accepted as satisfactory by protestants. Such supplements or reissues may be made effective on not less than ten days' notice to the public and the Commission in the manner required by law, and upon receipt thereof our order of suspension will be vacated.

24 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 115.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF LUMBER AND ARTICLES TAKING LUMBER RATES FROM STATIONS ON THE ALABAMA GREAT SOUTHERN RAILROAD AND OTHER POINTS TO ST. LOUIS, MO., AND OTHER POINTS.

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*Submitted September 18, 1912. Decided October 14, 1912.*

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1. Proposed increased rates on lumber from groups in the southeast to Cairo, Ill., proper, made in compliance with Commission's findings in *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239, not found to be unreasonable.
2. Proposed increased rates from certain points in the same territory to St. Louis, Mo., which bring such points into proper relationship with other points in the same territory, not found to be unreasonable. Order of suspension vacated.

*R. Walton Moore* and *M. P. Callaway* for Alabama Great Southern Railroad Company; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Macon, Dublin & Savannah Railroad; Seaboard Air Line Railway; Southern Railway Company; and Western Railway of Alabama.

*E. H. Dulaney* for Louisville & Nashville Railroad Company.

*H. R. Small* for Lumbermen's Exchange of St. Louis, Thomas & Proetz Lumber Company, and Birmingham Sawmill Company.

*George McBlair* for Lumbermen's Exchange of St. Louis.

*H. S. Antrim* for Board of Trade of Cairo, Ill.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Two distinct propositions are presented for determination in this investigation. First, advances in rates on lumber from southeastern points to Cairo, Ill., proper, and, second, advances in rates on the same commodity to St. Louis, Mo. No advances are proposed in the rates to Cairo for beyond. Protests against these advances were filed by the Board of Trade of Cairo and by the Lumbermen's Exchange of St. Louis.



The tariff which was suspended by the Commission is supplement No. 5 to Hinton's tariff, I. C. C. No. A-40. The first suspension was to September 28, 1912; the second to March 28, 1913.

All rates are stated herein in cents per 100 pounds.

The following statement shows present rates to Louisville, proposed rates to Cairo proper, present rates to Cairo proper, and the amounts of the proposed advances to Cairo.

	From groups—															
	1	2a	3	4	6	7	8	9	10	11	12	13	14	16		
Present rates to Louisville.....	15	17	16	17	17	19	19	19	19	19	20	16	16	17		
Proposed rates to Cairo proper.....		16	14	14	16	14	16	18	16	16	19	14	14	14		
Present rates to Cairo proper.....		14	14	14	16	14	16	18	16	16	19	14	14	14		
Advances to Cairo proper.....	1	1	2	3	1	5	3	1	3	3	1	2	2	3		

The advances also apply to Columbus and Hickman, Ky.; to some 35 stations immediately north of Cairo on the Chicago, Burlington & Quincy; Chicago & Eastern Illinois; Cleveland, Cincinnati, Chicago & St. Louis; Illinois Central; Mobile & Ohio; Wabash, Chester & Western; Southern; and Louisville & Nashville roads.

Columbus and Hickman, Ky., take the same rates on lumber as Cairo proper. The rates to the points immediately north of Cairo make on Cairo and were increased, so that rates to those points would not be lower than to Cairo.

The following statement shows the territory from which advances are proposed to Cairo.

Group No. 1 comprises Rome, Ga., and Central of Georgia, and Southern Railway stations between Rome and Chattanooga, Tenn.

Group No. 2-a comprises the Alabama Great Southern stations north of Attalla, Ala.

Group No. 3 comprises Anniston, Ala., and a few other points on the Southern Railway in that vicinity.

Group No. 4 comprises the Central of Georgia Railroad stations between Atlanta and Macon, between Griffin and Rome, between Columbus and Raymond, Ga., and between Birmingham and Opelika; the Seaboard Air Line Railroad stations between Birmingham and Atlanta; the Southern Railway stations between Macon and Atlanta and west of Atlanta; the Atlanta, Birmingham & Atlantic Railroad stations between Atlanta and Manchester, Ga., and between Manchester and Birmingham, except a few stations in the vicinity of Roanoke, Ala., which take group-6 rates.

Group No. 6 comprises Roanoke, Ala., and stations on the Central of Georgia Railroad between Roanoke and Opelika and a few stations on the Atlanta, Birmingham & Atlantic in the immediate vicinity of Roanoke.

Group No. 7 comprises Southern Railway local stations between Macon and Brunswick, Ga., including Columbus, Ga., Athens, Ga., and all south Atlantic ports excepting Jacksonville.

Group No. 8 comprises Central of Georgia Railway stations in Alabama except west of Opelika.

Group No. 9 comprises Atlantic Coast Line Railroad stations in Alabama and Jacksonville, Fla., from beyond.

Group No. 10 comprises Opelika, Ala., and Western Railway of Alabama stations between West Point and Montgomery.

Group No. 11 comprises Florala, Lockhart, Paxton, Lakewood, and other junction points of the Central of Georgia with the Louisville & Nashville Railroad in that territory.

Group No. 12 comprises all of the Central of Georgia Railroad except north of Atlanta and west of Opelika; certain stations on the Atlantic Coast Line or the Seaboard Air Line in Georgia; points on the Atlanta, Birmingham & Atlantic east of Manchester, Ga., and on the Georgia Southern & Florida Railway. Rates from practically all the other lines in Georgia are made a differential over group 12.

Group No. 13 covers Birmingham, Ala., and stations grouped therewith.

Group No. 14 covers Montgomery and Selma, Ala.

Group No. 16 covers Sylacauga, Ala., and junctions of the Central of Georgia and the Louisville & Nashville beyond.

Prior to November 28, 1891, rates on lumber from representative territory of origin in the southeast, such as the line of the East Tennessee, Virginia & Georgia Railway between Macon and Brunswick and stations on the Central of Georgia Railway, were the same to all of the Ohio River crossings, Cincinnati to Cairo, inclusive. The rates were 20 cents in box cars and 23 cents on flat cars. On the above date, the rates to Cairo were reduced 3 cents and the Cairo rate was used as a basis for rates to points north of the Ohio River, it being made 17 cents to Cairo in either box cars or on flat cars. In September, 1892, the rates to Louisville, Henderson, and Evansville were reduced 2 cents, making the rates 18 cents to Louisville and 19 cents to Evansville. On June 15, 1893, the rate to Cairo was further reduced to 16 cents. On May 17, 1894, a further reduction was made to Cairo, for beyond, at which time the proportional rate of 13 cents was established to Cairo to be used in constructing through rates to points north of the Ohio River in and west of the Buffalo-Pittsburgh zone. These proportional rates to Cairo were 7 cents less than the through rates to Cincinnati. The rate to Cairo proper was 3 cents more than the rate to Cairo for beyond. Rates from the Georgia territory to Cairo proper were restored to the basis of 3 cents less than Cincinnati, making the rate to Cairo proper 4 cents higher than



the rate to Cairo for beyond, except that this basis was not carried out by the Southern Railway on its line between Macon and Brunswick, where it maintained a rate of 13 cents to Cairo proper and for beyond.

In September, 1899, there was a uniform advance of 1 cent on lumber from all points in Texas, Arkansas, Louisiana, Mississippi, Alabama, and Georgia to Ohio River crossings, to Cairo proper and to Cairo for beyond. This made the rate to Cairo for beyond from the Macon & Brunswick line of the Southern Railway, from the lines of the Central of Georgia Railway in Georgia, and from other lines in that territory, 14 cents.

In October of the same year an additional advance of 1 cent was made from points in Georgia on and south of a line from Columbus to Augusta through Macon, except from stations on the Southern Railway between Macon and Brunswick, so that the proportional or basing rate of the Southern Railway from points between Macon and Brunswick was 14 cents, and that of the Central of Georgia Railway was 15 cents, except from Macon and Savannah.

At that time the rates from points on the Southern Railway between Macon and Brunswick were, to Cincinnati 21 cents, to Louisville 19 cents, to Evansville 20 cents, to Cairo proper and for beyond 14 cents. In the territory south of Macon, the rates on other lines were, to Cincinnati 22 cents, to Louisville 20 cents, to Evansville 21 cents, to Cairo proper 19 cents, to Cairo for beyond 15 cents.

In June, 1903, a general advance of 2 cents was made in rates on lumber from points in Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, and Florida to Ohio River crossings, including Cairo proper and Cairo for beyond. The Louisville & Nashville increased the rates to Cairo proper to the same level as the rates to Evansville. This advance was condemned by the Commission in the *Tift and Central Yellow Pine cases*, 10 I. C. C., 548, 505, and the rates were restored to the basis existing prior to June 22, 1903.

Generally the rates upon hardwood lumber were and for many years have been the same as on pine lumber from the pine-producing territory in the southeast.

The rates upon hardwood lumber from southern territory to Louisville, Ky., were attacked in *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239. It was there alleged that the rates from the territory involved in the instant case resulted in unjust discrimination against Louisville, Ky., in favor of Cairo, and that the rates to Louisville were unreasonable *per se*. It was explained in that case that the difference in favor of Cairo arose from the erroneous publication of a rate to Cairo proper which was the same as the basing or proportional rate to Cairo, and that prior to the decision



in the *Tift* and *Central Yellow Pine* cases the rate to Cairo had been raised to equal the Louisville rate, but was reduced to the former basis as the result of the decisions in those cases. The Commission did not find that the rates to Louisville were unjust and unreasonable, but said:

No sufficient reason has been shown why rates on defendants' lines should be higher to Louisville than to Cairo, Ill., for substantially similar distances, and defendants' tariffs should be amended accordingly. \* \* \* As we have stated, it is our opinion that from points on defendants' lines, which are equidistant, or substantially so, from Cairo and Louisville, the rates to Louisville ought not to exceed the rates to Cairo, and that from other points of origin the differences in rates to Cairo and Louisville should be proportionate with the difference in distance and the best disposition of the case seems to be to request the defendants to enter upon a revision of their tariffs which shall produce this result.

The carriers contend that in order to meet what they believe to be the views of the Commission in the *Norman Lumber Co. case, supra*, and to remove the discrimination which the Commission found to exist against Louisville in favor of Cairo the advances here in issue were made, the rates applying on pine as well as hardwood lumber. It is testified that where distances are practically the same, the rates have been made the same to Cairo and Louisville from points east of the line of the Louisville & Nashville Railroad from Decatur, Ala., through Birmingham and Montgomery.

It is stated that Cairo, in fact, draws no lumber from this southeastern territory and that the advanced rates will produce no additional revenue to the southern carriers, for the reason that there is no movement to Cairo proper under the present rates. The St. Louis protestants concede that the advanced rates to Cairo are paper rates, but allege that they were put in for the purpose of justifying by comparison the advanced rates to St. Louis. This contention does not seem forceful, for the reason that the advances are in the rates to Cairo proper; and, as has been stated, no advance is proposed in the rates to Cairo for beyond, upon which the St. Louis rates base.

Defendants allege that by comparison the proposed rates to Cairo are unreasonably low. For instance, from Savannah, Ga., to Cairo is 750 miles; under the present rate, the rate per ton per mile is 4 mills and under the proposed rate 5.6 mills. The distance to Louisville is 711 miles and the rate per ton per mile 5.3 mills. From Eastman, Ga., to Cairo is 627 miles; the rate per ton per mile under the present rate is 4.4 mills and under the proposed rate 6 mills. The distance to Cincinnati is 620 miles, the rate 21 cents, and the rate per ton per mile 6.7 mills. These examples could be continued at great length from the statement filed by respondents.

A comparison of the present rates to Cincinnati, Ohio, and to Evansville, Ind., with the present and proposed rates to Cairo, Ill., shows that generally for practically equal distances the rates per ton per mile under the proposed rates are considerably lower. The rates per ton per mile vary from 5.067 mills for a distance of 735 miles from Savannah, Ga., to 9.043 mills for a distance of 502 miles from Childersburg, Ala. In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220, attack was made upon an advance of 1 cent from points in the southwest to St. Louis. In that case the Commission said:

We are not prepared to find that earnings of slightly over 6½ mills per ton per mile for the transportation of this lumber a distance of 565 miles over the lines of these defendants under the circumstances in which it is transported would be excessive. \* \* \* Looking at this whole situation, we must conclude that the 18-cent rate to St. Louis was the result of extreme competition and that it was abnormally low in comparison with rates established by these defendant lines to points not as highly competitive. Considering the present rate of 19 cents in itself, we are unable to say it is unreasonable for the service performed.

The rate of 19 cents to Cairo applies to distances considerably in excess of 565 miles.

It is asserted that the advances in rates to Cairo are in violation of the decision in *Sondheimer v. I. C. R. R. Co.*, 17 I. C. C., 60, in which case the Commission determined the proper relationship of rates as between Cairo and Memphis. Inasmuch as the *Sondheimer* decision was in reference to a territory of origin different from that involved in the present proceeding, this objection does not appear to be well grounded.

Counsel for protestants argues that in adjusting rates to conform to the decision in the *Norman Lumber case, supra*, the rates to Louisville should have been reduced to equal the rates to Cairo. An order to cease and desist from an unjust discrimination operates in the alternative. The competing points must be placed on a parity. Where the rates to one point are unduly or unusually low, no valid objection can be found to the removal of the discrimination by an increase in such rates.

While, as stated, the Board of Trade of Cairo filed a protest against the advanced rates to Cairo, and although a representative of that body was present at the hearing, no objection was made to those advances and no testimony was offered on behalf of Cairo. It is testified and not contradicted that the carriers have endeavored to comply consistently and in good faith with the decision of the Commission in the *Norman Lumber case, supra*. It was perhaps impracticable to be exact, but it substantially appears that an honest effort has been made to conform to those findings. It is conceded that the increased rates to Cairo are practically paper advances. We think



that the carriers have justified those rates and that the readjustment proposed in the Cairo rates should be permitted to become effective.

The carriers assert that the proposed advanced rates to St. Louis have no connection with and no relation to the advances to Cairo proper. It is alleged that the proposed changes to St. Louis were contemplated previous to the decision of the *Norman Lumber case*, *supra*, and that the inclusion of the advances to St. Louis in the same supplement which contained the advances to Cairo was merely a matter of tariff economy.

The rate from Cairo to St. Louis, fixed by lines north of the Ohio River and lines not serving the southeastern territory, has been for many years and is now 7 cents. In making the rates from points of origin in the southeast to St. Louis, the local rate of 7 cents from Cairo to St. Louis is generally added to the rate to Cairo for beyond. The present and proposed rates to St. Louis, to Cairo for beyond, and the present and proposed differences are disclosed in the following tables.

*Prior to advance in rates.*

Groups—	1	2	2a	3	4	4a	5	6	7	7a	8	9	10	10a	11	12	13	14	14a	15	16	16a	17
To St. Louis.....	18	19	18	18	18	18	18	19	18	18	21	21	20	20	21	22	18	17	17	18	18	18	17
To Cairo for beyond.....	11	12	12	12	12	12	13	14	14	14	14	14	14	14	14	15	12	12	12	14	12	12	12
Arbitrary.....	7	7	6	6	6	6	5	5	4	4	7	7	6	6	7	7	6	5	5	4	6	6	5

*Under proposed advance in rates.*

Groups—	1	2	2a	3	4	4a	5	6	7	7a	8	9	10	10a	11	12	13	14	14a	15	16	16a	17
St. Louis advanced rates.....	18	19	19	19	19	18	18	21	21	18	21	21	21	20	21	22	19	19	17	18	19	18	17
To Cairo for beyond.....	11	12	12	12	12	12	13	14	14	14	14	14	14	14	14	15	12	12	12	14	12	12	12
Arbitrary.....	7	7	7	7	7	6	5	7	7	4	7	7	7	6	7	7	7	7	5	4	7	6	5

An examination of these tables will show that advances are proposed of 1 cent from groups 2a, 3, 4, 10, 13, and 16; of 2 cents from groups 6 and 14; and of 3 cents from group 7. In each instance, the result of the advances is to make the St. Louis rate 7 cents above the Cairo, for beyond, rate. As stated, group 16 covers Sylacauga, Ala., a junction point between the Central of Georgia and Louisville & Nashville roads. The rates from that group were advanced the same as from group 4, which covers local stations on each side of Sylacauga.

It will be noted that no change has been made in rates to Cairo or St. Louis from groups 4a, 5, 7a, 10a, 14a, 15, 16a, and 17 and that from these groups the arbitraries to St. Louis above Cairo for beyond rates are, respectively, 6, 5, 4, 6, 5, 4, 6, and 5.



Group 4a consists of stations on the Mobile division of the Southern Railway between Marion Junction and Akron, Ala.; on the Meridian division between Hardy Kiln and North Selma, Ala., inclusive; on the Blockton branch from Anita, Ala., to Hargrove, Ala., and between Birmingham and Wilton. The distances are substantially less to Cairo than to Louisville, and the direct one-line haul from that section of Alabama to Cairo is via the Mobile & Ohio, the rate of which, it is contended, must be met by the Southern.

Group 5 consists of Florence, Sheffield, Tuscumbia, and Decatur, from which points the rates to Cairo proper and to Louisville are the same. The distance to Cairo is slightly less than to Louisville.

Group 7a comprises stations west of the Louisville & Nashville Railroad, which are substantially nearer to Cairo than to Louisville.

Group 10a covers points on the line of the Western Railway of Alabama between Montgomery and Selma, Ala., neither inclusive. No change was made to Cairo because the stations are substantially nearer to Cairo than to Louisville.

Group 14a is Selma, Ala., which is substantially nearer to Cairo than to Louisville.

The same general statements may be made as to the other groups from which no changes were made—that is, they are west of the line of the Louisville & Nashville and substantially less distant from Cairo than from Louisville.

From points along the line of the Southern Railway and paralleling lines north of Macon, through Atlanta to Rome, Ga., and southwest of Rome, Ga., to Calera, Ala., and west of Anniston to Birmingham, Ala., the rates to St. Louis were 1 cent less than from other points in the same general territory. From a few stations on the Atlanta, Birmingham & Atlantic between La Grange, Ga., and Roanoke, Ala., and points on the Central of Georgia Railway between Opelika, Ala., and Roanoke, Ala., the present rates to St. Louis are 2 cents less than from other points in the same general territory. It is also proposed to advance the rate from Montgomery, Ala., to St. Louis in order that it shall not be less than from Birmingham, as is at present the case. From certain stations on the Southern Railway from Parrish, Ala., to Drifton, as well as from stations between Birmingham, Ala., and Columbus, Miss., it is proposed to reduce the present rates 2 cents. From points on the Southern Railway between Macon and Brunswick the present rate is 18 cents to St. Louis. This rate also applies from Brunswick and other ports, such as Savannah, Buford, Port Royal, and Charleston. Inasmuch as this rate is not in line with the rates from the same general territory, it is proposed to increase it 3 cents to St. Louis.

The rates from Columbus, Gainesville, and Athens, Ga., are increased by 3 cents for the reason that they also are out of line with rates in the surrounding territory.

The Louisville & Nashville Railroad is not an initial line under Hinton's tariff. It publishes its own tariff. From its whole local territory, including the territory involved in this proceeding, its rates on lumber to St. Louis are 1 cent higher than to Evansville. It was testified that at no time in its history has the Louisville & Nashville carried a rate on lumber to St. Louis lower than to Evansville, and its present rates to St. Louis are the same from corresponding territory as those here proposed by respondents.

The carriers aver that these advances to St. Louis are from a comparatively small and a very unimportant lumber-producing territory and simply put the points from which they apply on the same basis as other points in the same territory. No advances have been made to St. Louis from any of the principal lumber-producing lines in Georgia, such as the Georgia Southern & Florida Railway, Atlantic Coast Line Railroad, Seaboard Air Line Railway, Georgia & Florida Railway, Flint River & Northeastern Railway, Gulf Line Railway, and Georgia, Florida & Alabama Railway, from any of the southeastern and southern Alabama territory, nor from any Florida territory.

To show that the advanced rates to St. Louis are lower than from other territories, respondents submit a comparative statement, from which the following illustrations are taken:

From—	To—	Distance, miles.	Rate in cents per 100 pounds.	Rate in mills per ton per mile.
Wilsonville, Ala.....	St. Louis, Mo.....	567	19	6.702
Atlanta, Ga.....	do.....	611	19	6.219
Macon, Ga.....	do.....	699	21	6
Baxley, Ga.....	do.....	817	21	5.14
Little Falls, Minn.....	Cincinnati, Ohio.....	813	23	5.6
Akeley, Minn.....	St. Louis, Mo.....	812	21.5	5.295
Bragg, Tex.....	Wichita, Kans.....	709	27.5	7.757
Navasota, Tex.....	do.....	609	27.5	9.031
Trinity, Tex.....	do.....	633	27.5	8.689
Atlanta, Ga.....	Washington, D. C.....	649	23	7.088
Baxley, Ga.....	Fredericksburg, Va.....	693	23	6.638
Macon, Ga.....	Washington, D. C.....	698	23	6.59
Baxley, Ga.....	Havre de Grace, Md.....	805	27	6.708

Respondents contend that the rates to Cincinnati are low. In nearly every instance, however, the distances from Savannah, Macon, and group-4 points in Georgia to Cincinnati are less than to St. Louis, and the rates to St. Louis are less than to Cincinnati.

Respondents assert that inasmuch as St. Louis has always taken 2 cents above the Cairo proper rate, 2 cents higher than Louisville,



1 cent higher than Evansville, and the same rate as Cincinnati, there is no injustice or discrimination in the advanced rates to St. Louis. They also assert that the adjustment of rates from the southeast to St. Louis, 7 cents higher than the basing rate to Cairo for beyond, affords abnormally low rates to St. Louis, for the reason that it reflects all the competition which meets and converges at Cairo.

The testimony shows that the rates have not been increased from the sections where most of the lumber is produced, but only from such points as were below the normal adjustment. During January and August, 1911, the Southern Railway hauled but 15 cars of lumber into St. Louis and East St. Louis from territory from which the rates are sought to be advanced.

Protestants produced two witnesses, the president and the traffic manager of the Thomas & Proetz Lumber Company and the Birmingham Saw Mill Company. Apparently these companies are owned or controlled by the same interests.

The first named testified that his principal interest was in the rates on hardwood from Birmingham, Ala. He argued that as hardwood logs are shipped into Birmingham for distances from 20 to 150 miles on local rates, and there is no milling-in-transit arrangement at Birmingham, the lumber rate should be reasonably low. Rates in support of this contention are cited as follows:

From—	To—	Distance, miles.	Present rate in cents per 100 pounds.	Proposed rate in cents per 100 pounds.
Birmingham, Ala.....	St. Louis, Mo.....	555	18	19
Selma, Ala. (via Southern).....	do.....	626	17	17
Montgomery, Ala.....	do.....	676	17	19
Selma, Ala. (via L. & N.).....	do.....	859	17	.....
Prattville, Ala.....	do.....	629	16	.....

It is alleged that the rate to St. Louis from Birmingham should not exceed 16 cents on pine lumber and 14 cents on hardwood lumber. Hardwood, it is contended, should take a rate 2 cents lower than pine because it is heavier, is shipped rough, and not liable to damage. It is further alleged that St. Louis is subjected to unjust discrimination in the adjustment of rates as between it and Chicago. The rates from Mobile and New Orleans to Chicago are 24 cents; to St. Louis 18 cents. It is argued that that difference should be reduced from 6 to 4 cents. The hardwood mill of protestant at Birmingham was not being operated at the time of the hearing. Endeavor had been made to have the present rates reduced, but without success. Under the circumstances, protestant considers the proposed advance unreasonable.



The other witness stated that he did not desire to attack the established basis of rates on lumber from producing territory to St. Louis because he considered it a good one. The reasonableness of the rates in and of themselves is a minor consideration compared to equality with other markets. He alleged that the 7-cent rate from Cairo to St. Louis is excessive and results in unjust discrimination against St. Louis in favor of Chicago. Protestant submits the following exhibit of local rates from Cairo to various points:

From Cairo to—	Rate in cents per 100 pounds.	Distance, miles.	Rate in mills per ton per mile.
St. Louis, Mo.....	7	152	9.2
Chicago, Ill.....	10	363	5.5
Peoria, Ill.....	9	282	6.3
Detroit, Mich.....	14	637	4.4
Cleveland, Ohio.....	15	599	5
Buffalo, N. Y.....	18	782	4.6
Columbus, Ohio.....	14	491	5.7
Kansas City, Mo.....	14	527	5.3
Des Moines, Iowa.....	12.5	591	4.2
Moline, Ill.....	10	393	5

It is protestants' view that, taking the average distance from Cairo to 9 points, those distances ranging from 282 to 782 miles, the average being 518 miles, the average rate per ton per mile thus obtained would result in a reasonable rate if applied to the distance of 152 miles from Cairo to St. Louis. Or, that the rate per ton per mile under the 10-cent rate from Cairo to Chicago applied to the distance from Cairo to St. Louis would fix a proper rate from Cairo to St. Louis.

There are several valid objections to this contention:

First, it is not proposed to increase the proportional or basing rate to Cairo. It is, therefore, not cognizable in this proceeding and is not protested against.

Second, the 7-cent local rate has been in effect for many years, it includes bridge toll at St. Louis, it is almost universally applied from southeastern territory as a factor in making through rates to St. Louis, and the advances are for the purpose of making the adjustment more nearly uniform. Testimony in reference to the reasonableness *per se* of the 7-cent local rate to St. Louis is not relevant in this proceeding. If, as appears to be the case, protestant considers the 7-cent rate unreasonable or unjustly discriminatory, his proper remedy is by bringing that rate in issue.

Objection is voiced against the fact that rates on hardwood and pine are equal. In this proceeding and on this record we can make no finding on that question. It was alleged in *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349, that rates on hardwood lumber

from North Birmingham, Ala., to Philadelphia, Pa., and New Brunswick, N. J., were unreasonable and unduly prejudicial. We found the hardwood rates to be unreasonable in so far as they exceeded by more than 2 cents the rates contemporaneously in effect on yellow-pine lumber between the same points.

This witness also referred to the rate situation from Birmingham, alleging that that city should not be compelled to pay the present rate of 18 cents, or the proposed rate of 19 cents, when points south of Birmingham, such as Prattville, Montgomery, and Selma, on business passing through Birmingham, pay but 16 and 17 cents. This point is covered in fourth section applications.

Protestants' counsel alleges that the carriers concede that a different readjustment of rates should be made, because on the Southern Railway from Parrish, Ala., to Drifton, as well as from stations between Birmingham, Ala., and Columbus, Miss., the present rates are to be lowered to a basis of 17 cents to St. Louis, a reduction of 2 cents. These changes, however, appear to be in harmony with the readjustment. These points are west of Birmingham and, as we understand, the shipments move via Corinth, Miss., and not via Birmingham.

Owing to the pendency of fourth section applications and the meager testimony in respect to the situation from Birmingham, we can not find that rate unreasonable, as desired by protestants. It is proposed to advance it from 18 cents to 19 cents. Protestants desire it reduced to 16 cents on pine and 14 cents on hardwood. The tariff applies equal rates on pine and hardwood and many articles taking the same rates. We do not feel justified in the circumstances in segregating Birmingham from the general adjustment. In this proceeding and on this record we can not differentiate between yellow pine and hardwood. Neither can we say that making the rate from Montgomery the same as from Birmingham is unjustified.

On the whole record, we are of the opinion that the carriers have sustained the burden of proof cast upon them, and the order of suspension will be vacated.

No. 4700.

B. JOHNSON & SON

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

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*Submitted July 11, 1912. Decided October 15, 1912.*

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1. An arbitrary of 4 cents over the main-line junction to make rates to points in central freight association territory from Gill, W. Va., a branch-line point, while the rates from Meeks and Morehead, Ky., substantially similar branch-line points, took rates only 3 cents higher than their respective main-line junctions, found to have unjustly discriminated against Gill. Reparation to be awarded upon proof of damage.
2. The making of rates from Gill, Meeks, and Morehead 3 cents higher than from their respective main-line junctions, and the charging of slightly higher rates from Barbourville, upon which Gill bases, than from Big Sandy Junction or Ashland, upon which Meeks and Morehead base, not found to unjustly discriminate against Gill.

*Hines & Norman, by J. V. Norman, and Williams, Scott & Lovett, by E. E. Williams, for complainant.*

*W. S. Bronson for Chesapeake & Ohio Railway Company.*

#### REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The main line of the Chesapeake & Ohio Railway Company extending eastward from Cincinnati passes through Ashland and Big Sandy Junction, Ky., Kenova, Huntington, Barbourville, St. Albans, and Charleston, W. Va. The territory immediately south of the main line is served by numerous branches, those with which we are here chiefly concerned being the Lexington branch, running from Ashland, the Big Sandy branch from Big Sandy Junction, and the Guyandotte branch from Barbourville. Gill, W. Va., is a station on the latter, 36 miles from Barbourville, and is near the site of complainant's lumber operations. Morehead and Meeks, Ky., are stations on the Lexington and Big Sandy branches, respectively, at which other manufacturers operate. They are 59 and 54 miles distant from their respective main line junctions. The rates on lumber and forest products to points in central freight association territory are slightly higher from Gill than from either Meeks or Morehead. Complainant avers that this unjustly discriminates against Gill, and prays that the three stations be given the same rates. No attack is made upon the reasonableness *per se* of the rates.



From all of these branch-line points the Chesapeake & Ohio Railway makes rates which, while specifically published as through rates, are determined by the application of a certain differential over the main-line junction point. Morehead is based upon Ashland, Meeks upon Big Sandy Junction, and Gill upon Barboursville. Ashland and Big Sandy Junction are in the so-called Portsmouth-Huntington group, and take rates from  $\frac{1}{2}$  to 3 cents, but generally only 1 cent, lower than Barboursville, which is in the Charleston group. In 1907, when complainant located near Gill, the rates from that point were 4 cents higher than from Barboursville; Meeks was 6 cents higher than Big Sandy Junction, and Morehead 5 cents over Ashland. Considering the general difference of 1 cent in favor of Ashland and Big Sandy Junction and against Barboursville, the application of these differentials placed Gill on a parity with Morehead and at an advantage of 1 cent over Meeks. At that time there were practically no lumber operations at Meeks, and logs were floated down the Big Sandy River and milled at points on the Ohio River. Early in 1909 a large lumber mill was constructed at Meeks by the Rock Castle Lumber Company, which began shipping in the fall of that year. By reason of some understanding between this company and the Chesapeake & Ohio, effective October 1, 1909, Meeks was placed in the group taking a rate of 3 cents over Big Sandy Junction, resulting in a reduction of 3 cents and giving Meeks an average advantage of 2 cents over Gill. Upon protest by the Clearfield Lumber Company, operating at Morehead, that this reduction unjustly discriminated against it, the Chesapeake & Ohio Railway readjusted its Lexington branch rates and reduced the differential from Morehead from 5 to 3 cents, thereby placing Morehead and Meeks upon an absolute parity and both points at an advantage of 2 cents over Gill. While this was not effected until April 10, 1911, this Commission, upon complaint of the Clearfield Lumber Company, held that Morehead should take rates not higher than Meeks, and awarded reparation upon all shipments moving after October 1, 1909, the date the Meeks rates were reduced. *Clearfield Lumber Co. v. C. & O. Ry. Co.*, 21 I. C. C., 211. From October 1, 1909, therefore, complainant had been at a disadvantage of 2 cents as compared with either Meeks or Morehead. On May 25, 1912, more than three months after this complaint was filed, Gill was placed in the group taking 3 cents over Barboursville, and its general disadvantage is now but 1 cent. This amounts, however, to 2 cents per tie and 50 cents per 1,000 feet of lumber. The Chesapeake & Ohio states that it had extended its Guyandotte branch, and, considering it proper to widen the groups thereon, blanketed the 3-cent differential about 10 miles farther south, including, and extending a few miles beyond, Gill. This 3-cent differential group now covers the first 40 miles of the Guyandotte

branch, while on the Lexington branch the 3-cent differential is blanketed for 59 miles and on the Big Sandy branch for 54 miles. It is admitted that the operating conditions on these branches are the same, and, if anything, slightly in favor of the Guyandotte branch.

Assuming that the main-line rates are properly related, there is, and was, no reason why Gill should take an arbitrary of 4 cents and Meeks and Morehead 3 cents. We are of opinion that this in itself unduly discriminated against Gill. But we are confronted with the further contention that as Barboursville, the Guyandotte main-line junction point, takes rates 1 cent higher than Ashland or Big Sandy Junction, the respective main-line junctions of the Lexington and Big Sandy branches, the basing of Gill on Barboursville, even with the 3-cent differential, unjustly discriminates against Gill.

Defendants assert that this is justified by the difference in competitive conditions existing at Barboursville as compared with Ashland and Big Sandy Junction. At Ashland, Kenova, and Huntington the Chesapeake & Ohio meets active competition of the Baltimore & Ohio and the Norfolk & Western, and these lines constitute the short routes to points east of the Cincinnati-Chicago line of the Cleveland, Cincinnati, Chicago & St. Louis Railway Company. Even where the shorter route is via Cincinnati the Norfolk & Western and Baltimore & Ohio are the short lines via Kenova or Huntington. East of Huntington competition ceases and is not again encountered until Charleston is reached. There the Kanawha & Michigan is an active competitor of the Chesapeake & Ohio for traffic to central freight association territory. The exact extent to which competition fixes the Ashland, Kenova, and Huntington rates is not set forth, but it is clear that competition exists and renders the conditions dissimilar from those obtaining at Barboursville, a station local to the Chesapeake & Ohio. Guyandotte, 3 miles east of Huntington, is within its corporate limits and has been included in the group taking the Huntington rate, which, because of the requirements of the fourth section, is blanketed westward as far as Portsmouth, Ohio. The next higher rate group begins at Wilson, W. Va., just a few miles east of Guyandotte and Huntington, the Charleston rate applying again because of the Chesapeake & Ohio's adherence to the fourth section of the act. In this group is Barboursville, 9 miles east of Huntington or 6 miles east of Guyandotte, the extreme eastern limit of the Portsmouth-Huntington group. But groups must have their limits, and we see nothing unfair in this main-line adjustment. Complainant's contention rests upon the theory that as the distance from Gill to central freight association destinations is practically identical with that from Meeks and Morehead there should be no difference in the rates; that Gill should not be penalized because the branch line upon which it is located strikes



the main line at Barboursville instead of Huntington, Big Sandy Junction, or Ashland; that if branch-line rates must base on the main-line junctions the actual and not the physical junction must be considered; and that as trains are not broken at Barboursville, but move directly through to Huntington, it is upon that point the rates should base. While it appears that trains are not broken at Barboursville, there is nothing to indicate that this might not be done. Moreover, this would seem to be a matter of transportation convenience or economy, entitled to consideration as tending to show where the terminal expense lies, and therefore of probative value in determining the reasonableness of a rate rather than its discriminatory effect.

Most of the traffic from all these branches moves via the Chesapeake & Ohio to Cincinnati, through Ashland, where the route becomes common. From Morehead, Ashland is 59 miles over the Lexington branch; from Meeks, 54 miles over the Big Sandy branch, and 7 miles over the main line; from Gill, 36 miles over the Guyandotte branch, and 25 miles over the main line. Some shipments move via Kenova or Huntington, in which event the distance is in favor of Gill. To hold, however, that in instances of this kind the distance from the branch-line point to the point at which the route becomes common should determine the rate, would give to distance an exaggerated influence and, in this instance, tend to disrupt rates on other branches. The arbitrary on the Guyandotte branch is blanketed over a distance of 40 miles, embracing Gill. If the Gill rate were reduced because of distance, there is no reason why points on the same branch, located nearer Barboursville, should not have even lower rates than Gill. The minimum arbitrary applied on any of the Chesapeake & Ohio branches is 3 cents, except at some points east of Charleston, where the application of such an arbitrary would produce rates in excess of those applying from Virginia cities. So long as rates are made under the group system, the distance theory must be modified. The rates on the Guyandotte branch are on a parity with those on the Coal River branch, extending from St. Albans, and bear an equitable relationship to rates from other branches east thereof. We do not find the application of the 3-cent branch-line differential to be discriminatory, nor have we found the higher rate from Barboursville than from Ashland or Big Sandy Junction to be improper. Under all the circumstances we are unable to find that the present rates unjustly discriminate against Gill. We do find that the application of the 4-cent differential to Gill and the 3-cent differential to Meeks and Morehead resulted in rates which unjustly discriminated against Gill. In *Clearfield Lumber Co. v.*

*C. & O. Ry. Co., supra*, we awarded reparation to complainant on all shipments upon which it had paid rates constructed upon more than the 3-cent differential which has applied from Meeks since October 1, 1909, and was made effective from Morehead April 10, 1911. Following the action in that case, we find complainant entitled to reparation in the sum of 1 cent per 100 pounds upon all shipments upon which rates have been paid based on the 4-cent differential, moving within the statutory period. Upon receipt of the necessary proof as to shipments actually made and the amount of reparation due under the above finding, an order awarding reparation will be issued.

24 I. C. C.



CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED  
REPORT DURING THE TIME COVERED BY THIS VOLUME.

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944. PEABODY COAL COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY.—Distribution of coal cars at McCunesville, Perry County, Ohio. *Lawrence Maxwell, jr., A. W. Underwood, and C. C. Williams* for complainant. *John G. Wilson* for defendant. June 10, 1912. Dismissed.

2775. BILLINGS CHAMBER OF COMMERCE *v.* AHNAPEE & WESTERN RAILWAY COMPANY ET AL.—Rates between Billings, Mont., and points east. *Chas. D. Drayton* for complainant. *Chas. B. Hopper, Edw. Colston, W. T. Abbott, S. W. Howland, Blewett Lee, Wm. R. Begg, J. G. Trimble, Wm. L. Reed, F. E. Learned, R. W. Campbell, W. A. Walker, Henry Wolf Bikle, Geo. S. Patterson, R. F. Church, Wm. S. Burroughs, E. G. Buckland, E. B. Peirce, O. E. Butterfield, C. B. Fernald, Robert Dunlap, T. J. Norton, L. S. Cass, M. L. Clardy, James C. Jeffery, H. A. Taylor, H. Murray Andrews, S. W. Moore, F. H. Wood, S. A. Lynde, E. D. Sewall, Wm. Ellis, P. B. Warren, Edw. Barton, G. W. Seevers, Chas. Howard, R. F. Whale, J. B. Call, and Wm. C. Coleman* for defendants. June 10, 1912. Dismissed on motion of complainant.

3273. WILSEY & SHAFFER MANUFACTURING COMPANY *v.* VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY.—Rates on logs from Holly Ridge, La., to Vicksburg, Miss. *A. F. Shaffer* for complainant. *J. B. Bannon* for defendant. June 5, 1912. Dismissed; complaint satisfied.

3502. CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.—Rates and transit privileges on grain from Milwaukee, Wis., to eastern cities. *Miller, Mack, and Fairchild* for complainant. *Bills, Street & Parker, John B. Kerr, John Loud, H. A. Taylor, T. H. Burgess, J. F. Schaperkotter, O. E. Butterfield, Clyde Brown, C. E. Dewey, Wm. Ellis, S. A. Lynde, and E. J. Rich* for defendants. June 21, 1912. Dismissed on motion of complainant.

3506. PHOENIX FURNITURE COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY.—Rates on store fixtures from Eau Claire, Wis., to Oakes, N. Dak. *G. M. Stephen* for complainant. *C. C. Wright* for defendant. June 5, 1912. Dismissed on motion of complainant.

3621. JACKSON LUMBER COMPANY *v.* SOUTHERN RAILWAY COMPANY ET AL.—Rates on pine lumber from Dixie, S. C., to Star City, W. Va. *Claude W. Owen* for complainant. *C. B. Northrop* and *S. C. Nefler* for S. Ry. Co. June 11, 1912. Transferred to Special Reparation Docket for adjustment.

3641. THE PH. ZANG BREWING COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY. Rates on iron pipe coils from Chicago, Ill., to Denver, Colo. *G. M. Stephen* for complainant. *R. B. Scott* for defendant. July 13, 1912. Dismissed on motion of complainant; overcharge refunded.

3708. R. M. ROSE COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. Rates on whiskey, wine, etc., from various points to Chattanooga, Tenn., and Jacksonville, Fla. *G. M. Stephen* for complainant. *M. P. Callaway* for defendants. June 8, 1912. Transferred to Sepecial Reparation Docket for adjustment.

3976. CASTNER, CURRAN & BULLITT *v.* NORFOLK & WESTERN RAILWAY COMPANY. Rates on coal from Pocahontas, Thacker, and Kenova districts of West Virginia to Norfolk, Va. *Wm. A. Glasgow* for complainant. *R. Walton Moore* for defendant. October 8, 1912. Dismissed on motion of complainant.

4016. J. L. BOYCE *v.* KANSAS CITY SOUTHERN RAILWAY COMPANY. Rates on household goods and live stock, Pittsburg, Kans., to Horatio, Ark. *J. L. Boyce* for complainant in person. *S. W.* and *F. H. Moore* for defendant. August 1, 1912. Transferred to Special Reparation Docket for adjustment.

4030. GAMBLE-ROBINSON FRUIT COMPANY *v.* WABASH RAILROAD COMPANY ET AL. Rates on potatoes from Nameoki, Ill., to Aberdeen, S. Dak. *L. A. Knudsen* for complainant. *Geo. W. Seevers* for W. R. R. Co. August 1, 1912. Transferred to Special Reparation Docket for adjustment.

4042. GEORGE R. DILKES & COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY. Refusal to trim cars for a cargo of phosphate rock received at Baltimore, Md., from Port Tampa, Fla., to be shipped to Buffalo, N. Y. *Wm. A. Parker* for defendant. June 10, 1912. Dismissed on motion of complainant.

4075. PALMER & DONLEY *v.* ASHLAND & WESTERN RAILWAY COMPANY ET AL. Rates on hay, Ashland, Ohio, to Milton, Pa. June 10, 1912. Dismissed for want of prosecution.

4076. ABERNATHY FURNITURE COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY. Rates on go-carts, baby carriages, and sleeping coaches from Chicago, Ill., to Kansas City, Mo. *A. A. Hurd* for defendant. June 10, 1912. Dismissed for want of prosecution.

4107. MICHAEL COHEN & COMPANY *v.* MALLORY STEAMSHIP COMPANY ET AL. Rates on rough marble from New York to San Fran-



cisco, Cal. *Michael Cohen* for complainant. *W. P. Lewis, T. J. Norton*, and *D. L. Meyers* for defendants. June 4, 1912. Dismissed. Overcharge of \$134.76 refunded.

4112. COLORADO PORTLAND CEMENT COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rates on malleable-iron sprocket chains from Columbus, Ohio, and Indianapolis, Ind., to Portland, Colo. *G. M. Stephen* for complainant. *D. L. Meyers, J. L. Coleman, A. P. Humburg, B. M. Flippin, D. P. Connell, R. B. Scott*, and *Geo. H. Crosby* for defendants. July 10, 1912. Dismissed on motion of complainant. Complaint satisfied by refund.

4124. MINNEAPOLIS TRAFFIC ASSO. *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Rates on merchandise from Minneapolis, Minn., to South Dakota points. *Milton D. Purdy* for complainant. *J. B. Sheean, J. D. Armstrong, C. C. Wright, Edw. M. Hyzer, Wm. Ellis, R. B. Scott, R. V. Fletcher, A. P. Humburg, Geo. W. SeEVERS*, and *W. F. Dickinson* for defendants. June 10, 1912. Dismissed on motion of complainant.

4287. BURLINGTON COMMISSION COMPANY *v.* GREAT NORTHERN RAILWAY COMPANY. Rates on hay from Belleville and Avon, Wash., to Vancouver, B. C. *Ira A. Marchant* for complainant. June 22, 1912. Transferred to Special Reparation Docket for adjustment.

4413. CORRUGATED BAR COMPANY *v.* INDIANA HARBOR BELT RAILROAD COMPANY ET AL. Switching charges on steel bars from Indiana Harbor, Ind., and Lackawanna, N. Y., to Chicago, Ill. *Kenefick, Mitchell & Bass*, by *Herbert B. Ruthermann*, for complainant. *D. P. Connell* for defendants. June 10, 1912. Dismissed on motion of complainant.

4458. DENNIS MCCARTHY, FISCAL SUPERVISOR OF STATE CHARITIES OF THE STATE OF NEW YORK, *v.* DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY. Switching charges on coal Bath, N. Y., to Soldiers and Sailors' Home, about one mile distant. *James A. Parsons*, deputy attorney general, for complainant. *A. S. Learoyd* and *Geo. A. Poore* for defendant. July 12, 1912. Dismissed. Complaint satisfied.

4472. C. C. GRISWOLD & E. C. CHAMBERS *v.* CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY ET AL. Rates on building stone from Ellettsville, Ind., to Logan, Utah. *Collett & Hutchinson* for complainants. *O. C. Carter, O. E. Butterfield*, and *Clyde Brown* for defendants. August 12, 1912. Transferred to Special Reparation Docket for adjustment.

4487. DOMKE & CAMPBELL *v.* UNION PACIFIC RAILROAD COMPANY ET AL. Rates on marble and granite from St. Cloud, Minn., to Greeley, Colo. *C. W. Durbin* for complainant. June 22, 1912. Transferred to Special Reparation Docket for adjustment.

4543. GEORGE HAAS & SONS *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Rates on paper cards from Philadelphia, Pa., to San Fran-

cisco, Cal. *W. W. Brackett* for complainant. *F. C. Dillard, C. W. Durbrow* and *H. A. Scandrett* for defendants. July 26, 1912. Dismissed. Overcharge of \$7.60 refunded.

4551. *WELLS BROS. v. CHICAGO & ERIE RAIROAD COMPANY*. Rates on sale tickets from Elmira, N. Y., to Coffeyville, Kans. *O. M. Rogers* for complainant. *Robert Dunlap, T. J. Norton, H. A. Taylor,* and *T. H. Burgess* for defendants. June 4, 1912. Dismissed. Overcharge of \$8.19 refunded.

4680. *JULIUS KESSLER & COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Rates on whiskey from Tyrone, Ky., to Caruthersville, Mo. *Bruce & Bullitt* by *E. Helm Walker* for complainant. June 4, 1912. Dismissed on motion of complainant.

4732. *BARBER ASPHALT PAVING COMPANY v. LEHIGH VALLEY RAILROAD COMPANY ET AL.*—Rates on asphalt from Maurer, N. J., to Falconer, N. Y. *Geo. W. Jackson* for complainant. June 10, 1912. Dismissed on motion of complainant. Complaint satisfied.

4739. *DICKSON CAR WHEEL COMPANY v. TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.*—Rates on pig iron from Birmingham, Ala., to Houston, Tex. *Henry Dickson* for complainant. *Robert Dunlap, T. J. Norton, A. W. Houston, E. L. Sargent, Martin L. Clardy, Henry G. Herbel, Fred G. Wright, J. P. Blair, F. C. Dillard, Baker, Botts, Parker & Garwood* by *Viets Levy, R. Walton Moore, H. Booth, Fred H. Wood, Edw. A. Haid, Albert S. Brandeis, Wilson W. Proctor,* and *W. F. Dickinson* for defendants. June 4, 1912. Dismissed on motion of complainant.

4749. *POWELL FUEL COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Rates on coal from St. Charles and other Virginia coal fields to Columbia, S. C. *Rembert & Monteith* for complainant. *C. B. Northrop, R. Walton Moore, John W. Chalkley* and *J. F. Bublite* for defendants. July 9, 1912. Dismissed on motion of complainant.

4754. *MCRoy CLAY WORKS v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.*—Rates on clay conduits from Brazil, Ind., to Houston, Tex. *John T. Richards* for complainant. *Fred G. Wright, E. S. Stevens, W. F. Dickinson* and *Wallace T. Hughes* for defendants. June 25, 1912. Dismissed on motion of complainant.

4759. *NORTH CAROLINA TALC & MINING COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Rates on crude talc from Jasper, Ball Ground, and Canton, Ga., to Hewitt, N. C. *Merrimon, Adams & Adams* for complainant. *Wm. A. Northcutt* and *Albert S. Brandeis* for defendants. June 4, 1912. Dismissed on motion of complainant. Complaint satisfied.

4796. *McINNIS & STURGES MILLING COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Rates on grain and grain products from Meridian, Miss., to Birmingham and Selma, Ala. *Bordeaux & Venable* for complainant. *C. B. Northrop* for S. Ry. Co. June 21, 1912. Dismissed on motion of complainant.



4808. *WASSERMAN-GATTMAN COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.* Rates on down comforts from Philadelphia, Pa., to Sacramento, Calif. *J. O. Bracken* for complainant. *H. A. Scandrett*, *C. W. Durbrow*, and *Geo. D. Squires* for defendants. June 12, 1912. Dismissed on motion of complainant. Straight overcharge refunded.

4856. *RAYMOND P. GREGG v. DENVER, NORTHWESTERN & PACIFIC RAILWAY COMPANY ET AL.* Rates on emigrants' movables from Granby, Colo., to Mena, Ark. *Raymond P. Gregg* for complainant in person. *John G. Schaich*, *S. H. Babcock*, and *R. B. Scott* for defendants. July 8, 1912. Dismissed on motion of complainant. Straight overcharge of \$18.00 refunded.

4869. *BARNES GROCER COMPANY v. CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY COMPANY ET AL.* Rates on canned tomatoes from Elnora, Ind., to Poplar Bluff, Mo. *G. M. Stephen* for complainant. June 14, 1912. Dismissed on motion of complainant. Straight overcharge of \$10.10 refunded.

4882. *AMERICAN HAY COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.* Lighterage charge on hay and straw, New York, N. Y. *Geo. W. Jackson* for complainant. *Clyde Brown* for defendant. July 11, 1912. Dismissed on motion of complainant. Complaint satisfied.

5016. *NATOMAS CONSOLIDATED OF CALIFORNIA v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.* Rate on locomotive crane on its own wheels and parts thereof from Cleveland, Ohio, to Natoma, Cal. *J. O. Bracken* for complainant. *R. B. Scott*, *H. A. Scandrett*, *C. W. Durbrow*, and *Geo. D. Squires* for defendants. August 28, 1912. Dismissed on motion of complainant.





REPARATION CASES DISPOSED OF BY THE COMMISSION IN  
FORMAL BUT UNREPORTED DECISIONS DURING THE TIME  
COVERED BY THIS VOLUME.

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2713 (U. R. No. 599). MICHIGAN HARDWOOD MANUFACTURERS' ASSOCIATION *v.* TRANSCONTINENTAL FREIGHT BUREAU ET AL.—Rehearing granted. *W. E. McCornack* for complainants. No appearances for defendants. June 4, 1912. No reparation.

3857 (U. R. No. 600). WISCONSIN BRIDGE & IRON COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.—Misrouting shipment of structural iron from North Milwaukee, Wis., to Savanna, Ill. *Emil L. Fuhrmann* for complainant. *F. G. Wright* for defendant. June 3, 1912. Reparation awarded for \$192.97.

4078 (U. R. No. 601). LINDSAY & COMPANY, LIMITED, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.—Unreasonable rates on citrus fruit from various points in California to Missoula, Bozeman, Livingston, Billings, and Miles City, Mont., and Sheridan, Wyo. *L. M. Tracy* and *O. W. Tong* for complainant. *William Wallace, jr.*, for Northern Pacific Railway Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *J. L. Wines* for Southern Pacific Company. June 6, 1912. Reparation awarded for (total) \$5,582.19.

4188 (U. R. No. 602). BRODERICK & BASCOM ROPE COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—Unreasonable rate on wooden wire-rope reels from St. Louis, Mo., to Seattle, Wash. *O. M. Rogers* for complainant. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company and Northern Pacific Railway Company. June 6, 1912. Reparation awarded for \$295.

4213 (U. R. No. 603). SAN FRANCISCO NEWS COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.—No. 4213 (Sub-No. 1). SAN FRANCISCO NEWS COMPANY *v.* SOUTHERN PACIFIC COMPANY (ATLANTIC STEAMSHIP LINES) ET AL.—Unreasonable transcontinental rates on paper-bound books and periodicals. *W. W. Brackett* for complainant. *C. W. Durbrow* for Southern Pacific Company and Union Pacific Railroad Company. June 3, 1912. Reparation awarded for (total) \$40.

4258 (U. R. No. 604). H. H. BRINKMAN *v.* FREEO VALLEY RAILROAD COMPANY ET AL.—Unreasonable rate on white oak crossties from Eagle Mills, Ark., to Thebes and Cairo, Ill. *Guy W. Swaim* for complainant. *Roy F. Britton* and *J. D. Watson* for St. Louis South-

western Railway Company. June 3, 1912. Reparation awarded for \$300.24.

4281 (U. R. No. 605). *J. H. DAY COMPANY v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.*—Alleged unreasonable freight charges on iron drying racks from Brighton, Ohio, to St. Louis, Mo. *G. M. Stephen* for complainant. *Edward Barton* for Baltimore & Ohio Southwestern Railroad Company et al. June 3, 1912. Barred by the statute of limitations.

4214 (U. R. No. 606). *DECKELMAN BROTHERS, INCORPORATED, v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—A barber's chair so taken apart and packed as to secure the greatest possible economy of space in shipping should move at the rate provided for barbers' chairs completely knocked down. *W. W. Brackett* for complainant. *H. A. Scandrett* for Southern Pacific Company. June 3, 1912. No reparation.

4239 (U. R. No. 607). *W. T. FERGUSON LUMBER COMPANY v. LOUISIANA RAILWAY COMPANY ET AL.*—Allegation that defendant failed to comply with reconsigning order on yellow-pine lumber from Tully, La., to North Tonawanda, N. Y. *C. F. Ziebold* for complainant. *B. S. Atkinson* for Louisiana & Arkansas Railway Company and Vicksburg, Shreveport & Pacific Railway Company. June 3, 1912. Complaint dismissed.

4138 (U. R. No. 608). *CITICO FURNACE COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on iron ore from Patterson, Ala., to Chattanooga, Tenn. *Arthur B. Hayes* for complainant. *Nelson W. Proctor* for Louisville & Nashville Railroad Company. *William L. Frierson* for Tennessee, Alabama & Georgia Railway Company. June 3, 1912. Complaint dismissed.

4141 (U. R. No. 609). *HARRY E. JENNINGS v. DULUTH, SOUTH SHORE & ATLANTIC RAILWAY COMPANY ET AL.*—Misrouting of staves destined to Chicago, Ill. *Frank T. Edenharter* for complainant. *John Bickel* for Duluth, South Shore & Atlantic Railroad Company. *D. P. Connell* for Michigan Central Railroad Company. June 3, 1912. Reparation awarded for \$123.82.

4145 (U. R. No. 610). *REINHARDT GRAIN COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on alfalfa hay from Mesilla, N. Mex., to Blooming Grove, Tex. *D. D. Marley* for complainant. *A. C. Fonda* for Atchison, Topeka & Santa Fe Railway Company. *D. Upthegrove* for St. Louis Southwestern Railway Company of Texas. *E. L. Sargent* for Texas & Pacific Railway Company. June 6, 1912. Complaint dismissed.

4412 (U. R. No. 611). *LAGOMARCINO-GRUPE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rates



on peaches from Pullman, Kent City, and Casnovia, Mich., to Clinton and Burlington, Iowa. *A. C. Slaughter* for complainant. *R. B. Scott* and *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company. June 3, 1912. Reparation awarded for (total) \$56.78.

4420 (U. R. No. 612). SECURITY VAULT & METAL WORKS *v.* SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY ET AL.—Unreasonable rate on rolling-mill cutter from Newark, N. J., to Portland, Oreg. *A. J. Parrington* for complainant. *C. A. Hart* for Spokane, Portland & Seattle Railway Company and Northern Pacific Railway Company. June 3, 1912. Reparation awarded for \$24.80.

4437 (U. R. No. 613). UNION COAL & COKE COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—Alleged incorrect assessment of charges on coal. *C. W. Burbin* for complainant. *E. E. Whitted* for Chicago, Burlington & Quincy Railroad Company. *E. N. Clark* for Denver & Rio Grande Railroad Company. June 3, 1912. Complaint dismissed.

4441 (U. R. No. 614). MEEK LUMBER COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—Alleged unreasonable rate on soft lump coal from St. Louis, Mo., and East St. Louis, Ill., to Peru, Nebr. *E. J. McVann* for complainant. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *Henry G. Herbel* for St. Louis, Iron Mountain & Southern Railway Company. *A. P. Humburg* for Illinois Central Railroad Company. June 3, 1912. Complaint dismissed.

4497 (U. R. No. 615). GERMAIN COMPANY *v.* ATLANTIC COAST LINE RAILROAD COMPANY ET AL.—Unreasonable rate on crossties from Brunswick, Ga., to Ocoee, Tenn. *W. J. Herman* for complainant. No appearances for defendant. June 3, 1912. Reparation awarded for \$3,637.28.

4600 (U. R. No. 616). DUDLEY LUMBER COMPANY *v.* GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.—Alleged unreasonable rate on lumber from Milwaukee, Wis., to Grand Haven, Mich. *Ernest L. Ewing* for complainant. *L. C. Stanley* for defendant. June 6, 1912. Complaint dismissed.

4619 (U. R. No. 617). PHILLIP & ALLSEBROOK *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—No. 4619 (Sub-No. 1). IDELMAN BROTHERS COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.—No. 4619 (Sub-No. 2). KITELEY-JONSON-ST. CLAIRE HARDWARE COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.—No. 4619 (Sub-No. 3). *W. H. McCormick v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Alleged unreasonable rates on agricultural implements and passenger vehicles from Moline, Ill., to Colorado common points, and on whisky from Peoria, Ill., to Cheyenne, Wyo. *R. M. Lamont* and *B.*

*E. Bishop* for complainants. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *J. M. Cates* for Colorado & Southern Railway Company. *E. E. Whitted* for Denver & Rio Grande Railroad Company. *F. C. Dillard* for Union Pacific Railroad Company. June 3, 1912. Complaints dismissed.

3922 (U. R. No. 618). *C. R. DEDRICK ELECTRIC SUPPLY COMPANY v. SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY ET AL.*—Unreasonable rate on insulated copper wire from Denver, Colo., to Portland, Oreg. *A. J. Parrington* for complainant. *Carey & Kerr*, by *James C. Kerr*, and *C. A. Hart* for Spokane, Portland & Seattle Railway Company and Northern Pacific Railway Company. June 3, 1912. Reparation awarded for \$74.10.

4278 (U. R. No. 619). *PATHE LUMBER COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rates on sash, doors, and moldings from Oshkosh, Wis., to Dallas, Tex. *G. M. Stephen* for complainant. *C. C. Wright* for Chicago & North Western Railway Company. *Henry G. Herbel* for Texas & Pacific Railway Company and Missouri Pacific Railway Company. *Roy F. Britton* and *S. H. West* for St. Louis Southwestern Railway Company. *W. B. Groseclose* for Missouri, Kansas & Texas Railway Company. June 6, 1912. Reparation awarded for \$34.06.

3935 (U. R. No. 620). *BRODERICK & BASCOM ROPE COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on steel wire rope from St. Louis, Mo., to Jennings, La. *O. M. Rogers* for complainant. *James C. Jeffery* and *C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company. *H. A. Scandrett* for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railroad Company. Reparation awarded for \$4.04.

3264 (U. R. No. 621). *OSHKOSH EXCELSIOR MANUFACTURING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—No. 3264 (Sub-No. 1). *SAME v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable charges on excelsior pads from Oshkosh, Wis., to Jackson, Mich. *Geo. W. Wadsworth* for complainant. *Geo. C. Conn* for Pere Marquette Railroad Company. *O. E. Butterfield* for Michigan Central Railroad Company. *H. C. Cheyney* for Chicago & North Western Railway Company. June 3, 1912. No reparation.

4237 (U. R. No. 622). *ORANGE LUMBER COMPANY v. BEAUMONT & GREAT NORTHERN RAILROAD ET AL.*—Unreasonable rate on yellow-pine lumber from Westville and Onalaska, Tex., via interstate route to Wellington, Tex. *J. M. Simmons* for complainant. *James W. Orr* for Beaumont & Great Northern Railroad. *L. M. Hogsett* for International & Great Northern Railroad Company and Thomas J. Freeman, receiver thereof. *Spoons, Thompson & Barwise* and *Wilson &*



*Dabney* for Fort Worth & Denver City Railway Company. June 3, 1912. Reparation awarded for \$31.99.

4309 (U. R. No. 623). ASSOCIATED OIL COMPANY *v.* SOUTHERN PACIFIC COMPANY ET AL.—Unreasonable rates on petroleum oil from McKittrick and Olig, Cal., to Bakersfield, Cal. *Henry Ach* for complainant. *George D. Squires* for Southern Pacific Company. June 6, 1912. Reparation awarded for \$13,468.20.

4476 (U. R. No. 624). LAGOMARCINO-GRUPE COMPANY *v.* MOBILE & OHIO RAILROAD COMPANY ET AL.—Alleged unreasonable rates on cabbage from Mertz, Neshota, and Lacon, Ala., to Burlington and Davenport, Iowa. *G. W. Wadsworth* for complainant. *Frank W. Gwathmey* for Mobile & Ohio Railroad Company. *W. G. Dearing* for Louisville & Nashville Railroad Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. June 8, 1912. Complaint dismissed.

3760 (U. R. No. 625). C. C. BELKNAP GLASS COMPANY *v.* PHILADELPHIA & READING RAILWAY COMPANY ET AL.—Alleged unreasonable rate on prism-glass panels from Philadelphia, Pa., to Seattle, Wash. *John Fixott* for complainant. *F. D. Burroughs* for Chicago, Milwaukee & Puget Sound Railway Company and Chicago, Milwaukee & St. Paul Railway Company. June 8, 1912. Complaint dismissed.

4120 (U. R. No. 626). ANDERSON-TULLY COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.—Unreasonable rate on logs from Gavin, Ark., to Memphis, Tenn. *H. B. Anderson* for complainant. *C. C. P. Rausch* for defendant. June 3, 1912. Reparation awarded for \$531.70.

4122 (U. R. No. 627). ADAMS & COMPANY *v.* ILLINOIS CENTRAL RAILROAD COMPANY.—Alleged unreasonable rates to Hammond, La., on sole and finished, or upper, leather from Chicago, Ill., and on shoes from St. Louis, Mo. *J. Q. Adams* for complainant. *R. Walton Moore* and *Charles J. Rixey, jr.*, for defendant. June 3, 1912. Complaint dismissed.

4169 (U. R. No. 628). OHIO IRON & METAL COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Unreasonable rate on scrap iron from Marinette, Wis., to Brackenridge, Pa., due to misrouting. *I. Shapiro* for complainant. *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company. *James Stillwell* for Pennsylvania Company. June 8, 1912. Reparation awarded for \$11.93.

4571 (U. R. No. 629). NASHVILLE TIE COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY.—Unreasonable rate on crossties and switch ties from Stovall, Ky., to Louisville, Ky. *R. B. C. Howell* for complainant. No appearance for defendant. June 6, 1912. Reparation awarded for \$443.56.

4451 (U. R. No. 630). *D. E. EVANS & COMPANY ET AL. v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.*—Reparation claimed on oranges, grapefruit, and pineapples from Florida points to destinations north of the Ohio River, west of Buffalo-Pittsburgh line, and east of Missouri River. *H. C. Lust* for complainant. *Frank W. Gwathmey* for Illinois Central Railroad Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *W. G. Dearing* for Louisville & Nashville Railroad Company. *James Stillwell* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Cleveland, Akron & Cincinnati Railway Company. June 6, 1912. Complaint dismissed.

4514 (U. R. No. 631). *CENTRAL COMMERCIAL COMPANY v. GULF & SHIP ISLAND RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on turpentine from Howison, Miss., to Milwaukee, Wis. *Collett & Hutchison*, by *G. E. Hutchison*, for complainant. *Frank W. Gwathmey* for Gulf & Ship Island Railroad Company. *William G. Dearing* for Louisville & Nashville Railroad Company. *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company. June 3, 1912. Reparation awarded for \$50.49, charges found to have been based upon excessive weight.

4635 (U. R. No. 632). *E. J. LYONS & COMPANY ET AL. v. CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY.*—Allegation of undue discrimination and the enforcement of unreasonable regulations in the delivery of horses and mules at Augusta, Ga. *R. J. Southall* for complainant. *M. P. Callaway* for defendant. June 6, 1912. Complaint dismissed.

4665 (U. R. No. 633). *E. M. STEWARD v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—No. 4665 (Sub-Nos. 1 and 2). *J. T. RIGHTSSELL v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—No. 4691. *LEWIS BROTHERS & JOHNSON MERCANTILE COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rates on shipments from various points to destinations in Colorado intermediate to Denver and Pueblo. *C. W. Durbin* for complainants. *R. G. Merrick* for Atchison, Topeka & Santa Fe Railway Company. *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company. June 3, 1912. Reparation awarded for (total) \$73.50.

4687 (U. R. No. 634). *SCOTT-MAYER COMMISSION COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on celery from Pueblo, Colo., to Little Rock, Ark. *Morris M. Cohn* for complainant. *J. E. Johanson* for Atchison, Topeka & Santa Fe Railway Company and Chicago, Rock Island & Pacific Railway Company. June 8, 1912. Complaint dismissed.

3517 (U. R. No. 635). *BLODGETT MILLING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Discriminatory



rates on rye and buckwheat products from Janesville, Wis., to Denver, Colorado Springs, and Pueblo, Colo. *William D. Kerr* for complainant. *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company. *George H. Crosby* and *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *C. C. Wright* and *C. A. Vilas* for Chicago & North Western Railway Company. *W. F. Dickinson* and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company. *H. A. Scandrett* and *L. T. Wilcox* for Union Pacific Railroad Company. June 6, 1912. Award of reparation deferred pending presentation of necessary data.

4056 (U. R. No. 636). MARTIN STAVE COMPANY, LIMITED, *v.* LOUISIANA & NORTH WEST RAILROAD COMPANY ET AL.—Unreasonable rates on staves from Haynesville, La., to San Francisco, Cal. *G. F. Thomas* for complainant. *S. S. Senne* for Louisiana & North West Railroad Company. *F. C. Dillard* and *H. A. Scandrett* for Houston East & West Texas Railway Company; Houston & Shreveport Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; and Southern Pacific Company. June 3, 1912. Reparation awarded for (total) \$255.26.

4128 (U. R. No. 637). REINHARDT GRAIN COMPANY *v.* OKLAHOMA CENTRAL RAILWAY COMPANY ET AL.—Unreasonable rate on snapped corn from Blanchard, Okla., to Terrell, Tex. *D. D. Marley* for complainant. *A. C. Fonda* for Gulf, Colorado & Santa Fe Railway Company. *E. L. Sargent* for Texas & Pacific Railway Company. June 3, 1912. Reparation awarded for \$29.44.

4252 (U. R. No. 638). RENO GROCERY COMPANY *v.* SOUTHERN PACIFIC COMPANY.—No. 4252 (Sub-No. 1). *W. I. Mitchell Company v. SAME.*—No. 4252 (Sub-No. 2). *I. H. Kent Company v. SAME.*—Unreasonable rate on sugar from San Francisco and Crockett, Cal., to Reno and Hazen, Nev. *William P. Seeds* for complainant. *C. H. Durbrow* and *H. A. Scandrett* for defendant. June 6, 1912. Reparation awarded for (total) \$155.44.

4268 (U. R. No. 639). PAYSON SMITH LUMBER COMPANY *v.* SALEM, WINONA & SOUTHERN RAILROAD COMPANY ET AL.—Misrouting of lumber from West Eminence, Mo., to Hibbing, Minn. *Frank A. Larish* and *Herman Mueller* for complainant. *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company. June 3, 1912. Reparation awarded for \$90.60.

4433 (U. R. No. 640). WESTERN CHEMICAL MANUFACTURING COMPANY *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.—Unreasonable rate on empty ammonia drums from Los Angeles, Cal., to Denver, Colo. *C. W. Durbin* for complainant. *R. G. Merrick* for defendant. June 6, 1912. Reparation awarded for \$1.63.

4621 (U. R. No. 641). S. E. JEFFREYS *v.* TEXAS & PACIFIC RAILWAY COMPANY ET AL.—Unreasonable fare from Big Springs, Tex.,

to Carpentersville, Ill. *G. M. Stephen* for complainant. *Henry G. Herbel* for Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company. *C. C. Wright* for Chicago & North Western Railway Company. *Winston, Payne, Strawn & Shaw* for Chicago & Alton Railroad Company. June 3, 1912. Reparation awarded for \$16.51.

4625 (U. R. No. 642). *J. G. KULZER v. GREAT NORTHERN RAILWAY COMPANY ET AL.*—Misrouting of lumber from Kulzers, Wash., to Wheatland, Wyo. *J. D. Armstrong* for Great Northern Railway Company. *E. E. Whitted* and *J. M. Cates* for Colorado & Southern Railway Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. June 6, 1912. Reparation awarded for \$49.36.

4382 (U. R. No. 643). *MENASHA WOODENWARE COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on wooden kegs from Milwaukee, Wis., to Kosciusko, Miss. *G. M. Stephen* for complainant. *C. C. Wright* and *A. H. Lossow* for Chicago & North Western Railway Company. *Frank W. Gwathmey* for Illinois Central Railroad Company. June 6, 1912. Reparation awarded for \$3.86.

4269 (U. R. No. 644). *MARX HIDE & TALLOW COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable charges on green salted hides from El Paso, Tex., to Kenosha, Wis. *Charles D. Drayton* for complainant. No appearance for defendants. June 3, 1912. Reparation awarded for \$494.07.

4670 (U. R. No. 645). *BURKE TANNING COMPANY v. SOUTHERN RAILWAY COMPANY.*—Alleged unreasonable rate on liquid tanning extract from Newport, Tenn., to Morganton, N. C. *Arthur B. Hayes* for complainant. *C. B. Northrop*, *M. P. Callaway*, and *A. M. Bull* for defendant. October 8, 1912. Complaint dismissed.

4830 (U. R. No. 646). *BIG FOUR COAL & COKE COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Assessment of charges, without tariff authority, for reconsignment of coal on the rails of the Denver & Rio Grande Railroad at Pueblo, Colo. *C. W. Durbin* for complainant. *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company. *E. N. Clark* for Denver & Rio Grande Railroad Company. October 8, 1912. Dismissal of complaint deferred pending receipt of proof that overcharges have been refunded.

4848 (U. R. No. 647). *COLORADO MACHINERY & SUPPLY COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Allegation that shipment consisted of scrap iron, and should have been so charged. *W. W. Wallace* for complainant. *R. B. Scott* for defendant. October 8, 1912. Complaint dismissed.

4866 (U. R. No. 648). *B. F. GILBERT v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on gasoline sadirons in the western classification. *B. F. Gilbert* for



complainant. No appearances for defendants. October 8, 1912. Complaint dismissed.

3064 (U. R. No. 649). *AMERICAN HAY COMPANY v. LEHIGH VALLEY RAILROAD COMPANY*.—Discriminatory charge for reconsigning hay at Townley, N. J. *George W. Jackson* for complainant. *E. H. Boles* for defendant. October 8, 1912. Reparation awarded for \$1,462.

4836 (U. R. No. 650). *STANDARD IRON & METAL COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL*.—Unreasonable rate on old car axles from Chicago, Ill., to Denver, Colo. *C. W. Durbin* for complainant. *E. N. Clark* for Denver & Rio Grande Railroad Company and Missouri Pacific Railway Company. October 8, 1912. Reparation awarded for \$75.65.

4161 (U. R. No. 651). *VILTER MANUFACTURING COMPANY v. ERIE RAILROAD COMPANY ET AL*.—Unreasonable rate on galvanized ice molds or cans from Niles, Ohio, to Los Angeles, Cal. *C. D. Fahrney* for complainant. No appearances for defendants. October 7, 1912. Reparation awarded for \$67.47.

4436 (U. R. No. 652). *HEID BROTHERS v. SOUTHERN PACIFIC COMPANY ET AL*.—Unreasonable rate on hay from Hollister, Cal., to El Paso, Tex. *Rufus B. Daniel* for complainant. *F. C. Dillard* for defendants. October 8, 1912. Reparation awarded for \$89.25.

4826 (U. R. No. 653). *AMERICAN RADIATOR COMPANY v. ERIE RAILROAD COMPANY ET AL*.—Alleged unlawful rate on cast-iron boilers from Black Rock, N. Y., to San Francisco, Cal. *Cassoday, Butler, Lamb & Foster* for complainant. *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company. October 8, 1912. Complaint dismissed.

4772 (U. R. No. 654). *WACO FREIGHT BUREAU ET AL v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS ET AL*.—Unreasonable and discriminatory charge on automobiles from Muncie, Ind., to Waco, Tex. *J. C. Dillard* for complainants. *Scott & Ross* and *W. F. Murray* for St. Louis Southwestern Railway Company. *W. F. Murray* for Gulf, Colorado & Santa Fe Railway Company. October 8, 1912. Reparation awarded for \$41.82.

4504 (U. R. No. 655). *COHANKUS MANUFACTURING COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL*.—Unreasonable charges on cotton mop heads and cotton mops and handles from Paducah, Ky., to San Francisco, Cal. *O. M. Rogers* for complainant. *Frank W. Gwathmey* for Illinois Central Railroad Company. *L. T. Wilcox* for Southern Pacific Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Louisiana Western Railroad Company. October 8, 1912. Reparation awarded for \$112.19.



4672 (U. R. No. 656). *STANDARD KNITTING MILLS v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on cotton-mill machinery from Westfield, Mass., and Amsterdam, N. Y., to Knoxville, Tenn. *O. M. Rogers* for complainant. *Claudian B. Northrop* for Southern Railway Company. October 8, 1912. Complaint dismissed.

4827 (U. R. No. 657). *CLARK COAL & COKE COMPANY v. CUMBERLAND RAILROAD COMPANY ET AL.*—Unreasonable rate on bituminous coal from Artemus, Ky., to Nevada, Iowa. *J. A. Fenelon* for complainant. *F. B. Townsend* for Minneapolis & St. Louis Railroad Company. *W. R. Sterett* for St. Paul & Kansas City Short Line Railroad Company. October 8, 1912. Reparation awarded for \$4.08.

4595 (U. R. No. 658). *STANDARD OIL COMPANY (KENTUCKY) v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on turpentine from Savannah, Ga., to Montreal, Que. *Charles Van Overbeke* for complainant. *E. C. Blanchard* for Atlantic Coast Line Railroad Company; Richmond, Fredricksburg & Potomac Railroad Company; and Washington Southern Railway Company. October 8, 1912. Complaint dismissed.

4646 (U. R. No. 659). *A. WILLIS & COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on plants and trees from Ottawa, Kans., to Wiggins, Colo. *O. M. Rogers* and *W. A. Ahern* for complainants. *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company. October 8, 1912. Complaint dismissed.

4525 (U. R. No. 660). *RIVERSIDE MILLS v. SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on cotton waste from Augusta, Ga., to Newport News, Va. *R. J. Southall* for complainant. *M. P. Callaway* for Southern Railway Company. October 8, 1912. Reparation awarded for \$20.71.

4658 (U. R. No. 661). *H. ROSENTHAL & SONS COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Unreasonable rate on glass bottles from Cincinnati, Ohio, to St. Marys, Ky. *O. M. Rogers* for complainant. *W. A. Northcutt* for defendant. October 8, 1912. Reparation awarded for \$9.90.

4741 (U. R. No. 662). *CHATTANOOGA MEDICINE COMPANY v. CHESAPEAKE & OHIO RAILWAY COMPANY OF INDIANA ET AL.*—Unreasonable rate, Chicago to Cincinnati, on metallic signs destined to Chattanooga, Tenn. *Campbell & Coffey* for complainant. *Frank W. Gwathmey* and *Charles Barham* for Nashville, Chattanooga & St. Louis Railway. October 8, 1912. Reparation awarded for \$111.43.

4329 (U. R. No. 663). *MENEFEE BROTHERS v. VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable charges

on cypress shingles from Monroe, La., to Wellington, Tex. *S. Beck* for complainant. *C. L. Fontaine* for Wichita Falls & Northwestern Railway Company. *J. D. Youman* for Vicksburg, Shreveport & Pacific Railway Company. October 7, 1912. Reparation awarded for \$61.

4524 (U. R. No. 664). *RIVERSIDE MILLS v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.*—Alleged unreasonable charges on re woven bagging from Augusta, Ga., to points in Texas. *R. J. Southall* for complainant. *M. P. Callaway* for Central of Georgia Railway Company and Illinois Central Railroad Company. October 8, 1912. Complaint dismissed.

4886 (U. R. No. 665). *MERCANTILE LUMBER & SUPPLY COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY.*—Unreasonable charges on crossties from Horatio, Ark., to Kansas City, Mo. *Henry W. Jacques* for complainant. *J. R. Mills* for defendant. October 8, 1912. Reparation awarded for \$12.50.

2235 (U. R. No. 666). *ALLEN & HIGGINS LUMBER COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rate on hardwood lumber from Memphis, Tenn., to San Francisco, Cal. *Lester G. Burnett* and *J. O. Bracken* for complainant. *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company. *C. W. Durbrow* for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company. October 7, 1912. Reparation awarded for \$51.46.

4574 (U. R. No. 667). *BRIGGS & TURIVAS v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable switching charges on scrap iron from Harvey, Ill., to Kenosha, Wis. No appearance for complainants. *A. H. Lossow* for Chicago & North Western Railway Company. October 8, 1912. Reparation awarded for \$12.09.

4813 (U. R. No. 668). *B. JOHNSON & SON v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Unreasonable rates on railroad ties from Wilton, London, and Pittsburg, Ky., to Louisville, Ky. *Frank A. Larish* and *G. W. Wadsworth* for complainants. *William A. Northcutt* for Louisville & Nashville Railroad Company. *Theodore Schmidt* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Company; and Pennsylvania Terminal Railway Company. October 8, 1912. Reparation awarded for \$2,664.35.

4241 (U. R. No. 669). *WILLIAM H. McDANIEL v. SOUTHERN PACIFIC COMPANY ET AL.*—Alleged unreasonable rate on iron and steel borings and turnings from San Francisco, Cal., to Benton, Cal. *J. O. Bracken* for complainant. *H. A. Scandrett* and *George D. Squires* for defendants. October 7, 1912. Complaint dismissed.

4483 (U. R. No. 670). *SMITH & COMPANY, LIMITED, v. OREGON SHORT LINE RAILROAD COMPANY ET AL.*—Alleged unreasonable charges on barley and oats from Weiser and Crystal, Idaho, to Denver, Colo.,

and Salina, Kans. *M. I. Church* for complainant. *H. A. Scandrett* and *J. V. Lyle* for defendants. October 8, 1912. Complaint dismissed.

I. & S. No. 97 (U. R. No. 671). IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CLASS AND COMMODITY RATES FROM ALTON, ILL., TO HENDERSON AND OWENSBORO, KY.—Suspended tariff issued to correct a tariff containing rates published through error. *R. A. Miller* for Louisville, Henderson & St. Louis Railway Company. *A. P. Humburg* for Illinois Central Railroad Company. *William A. Northcutt* for Louisville & Nashville Railroad Company. *A. W. Sherwood* for Alton Board of Trade. October 14, 1912. Order vacated and proceeding dismissed.

4654 (U. R. No. 672). *NEWELL SANDERS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on plow steel from Milwaukee, Wis., via Cairo, Ill., to Chattanooga, Tenn. *Campbell & Coffey* for complainant. *Frank W. Gwathmey* for Chicago, Milwaukee & St. Paul Railway Company; Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway; and Southern Railway Company. October 8, 1912. Reparation awarded for \$33.01.

I. & S. No. 86 (U. R. No. 673). IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF COAL IN CARLOADS FROM GALVESTON, TEX., TO POINTS IN LOUISIANA.—Unreasonable and unjust advances in rates on coal. *H. H. Haines* for Galveston Commercial Association. No appearances for carriers. October 7, 1912. Items canceled.

4535 (U. R. No. 674). *SQUIRE DINGEE COMPANY v. CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on pickles from Chicago, Ill., to Cincinnati, Ohio, destined to Atlanta, Ga. *O. M. Rogers* for complainant. *A. C. Tummy* for Chicago, Indianapolis & Louisville Railway Company. *William G. Dearing* for Louisville & Nashville Railroad Company. October 8, 1912. Complaint dismissed.

4249 (U. R. No. 675). *DICKHAUS, MOMBERG & COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Alleged unreasonable rates on potatoes from Mansura, La., to Cincinnati, Ohio. *John A. Schall* for complainants. *C. C. P. Rausch* for Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company. October 7, 1912. Complaint dismissed.

4883 (U. R. No. 676). *JACK BROTHERS v. DENVER & RIO GRANDE RAILROAD COMPANY.*—Erroneous construction of rates on wire and nails from Pueblo, Colo., to Romeo, Colo. *C. W. Durbin* for complainants. *E. N. Clark* for defendant. October 8, 1912. Reparation awarded for \$15.73.



3877 (U. R. No. 677). *CHARLES F. FREY v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.*—Unreasonable rate on horses, with man in charge, from Gillespie, Ill., to Portland, Oreg. *A. J. Parrington* for complainant. *W. W. Cotton* and *W. A. Robbins* for Oregon-Washington Railroad & Navigation Company. October 7, 1912. Reparation awarded for \$52.54.

4391 (U. R. No. 678). *LEE A. NAUSS v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.*—Misrouting of logs from Shelburn and Farmersburg, Ind., to Greenville, Ohio. *Lee A. Nauss* for complainant in person. *W. M. Matthews* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Vandalia Railroad Company. *B. H. Stanage* for Chicago & Eastern Illinois Railroad Company. October 7, 1912. Reparation awarded for \$56.90.

4698 (U. R. No. 679). *TIMMONS HARMOUNT v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Unreasonable rate on crossties, Calvary, Ky., to Cincinnati, Ohio. *Timmons Harmount* for complainant in person. No appearance for defendants. October 8, 1912. Reparation awarded for \$266.94.

4009 (U. R. No. 680). *VIRGINIA-CAROLINA CHEMICAL COMPANY v. SOUTHERN RAILWAY COMPANY.*—Alleged unreasonable rates on fertilizer from Blacksburg, S. C., to various points in North Carolina. *H. W. B. Glover* for complainant. *C. B. Northrop* for defendant. October 7, 1912. Complaint dismissed.

4231 (U. R. No. 681). *NEVADA HILLS MINING COMPANY v. SOUTHERN PACIFIC COMPANY.*—Alleged unreasonable rates on mining machinery, structural iron and supplies from San Francisco, Cal., to Fallon, Nev. *William P. Seeds* for complainant. *C. W. Durbrow* and *H. A. Scandrett* for defendant. October 7, 1912. Complaint dismissed.

4285 (U. R. No. 682). *HEADINGTON & HEDENBERGH v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.*—Unreasonable refrigeration rate on peaches from Bullard, Tex., to Alton, Ireton, Linne Grove, and Paulina, Iowa. *George T. Bell* for complainant. *W. D. Burr* for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company. October 7, 1912. Reparation awarded for \$108.

4846. (U. R. No. 683). *CHICAGO LUMBER & COAL COMPANY v. LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.*—Neglect of initial carrier to observe routing instructions. *Robert W. Hall* for complainant. No appearance for defendants. October 8, 1912. Reparation awarded for \$31.

4088 (U. R. No. 684). *GAMBLE-ROBINSON COMMISSION COMPANY v. OREGON SHORT LINE RAILROAD COMPANY ET AL.*—Unreasonable rate on green peaches from Brigham, Utah, to Chippewa Falls, Wis.

*L. A. Knudsen* for complainant. *F. C. Dillard*, *H. A. Scandrett*, and *L. F. Wilcox* for Oregon Short Line Railroad Company and Union Pacific Railroad Company. *W. D. Burr* for Chicago, St. Paul, Minneapolis & Omaha Railway Company. October 7, 1912. Reparation awarded for \$35.89.

4750 (U. R. No. 685). *STANDARD OIL COMPANY (KENTUCKY) v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.*—Unreasonable rate on petroleum fuel oil from Port Tampa, Fla., to Jacksonville, Fla. *Charles Van Overbeke* for complainant. *E. C. Blanchard* for Atlantic Coast Line Railroad Company and Southern Railway Company. *R. D. Hunter* for Atlantic Coast Line Railroad Company. October 8, 1912. Reparation awarded for \$74.04.

4459 (U. R. No. 686). *P. MALONEY & SONS v. SOUTHERN KANSAS RAILWAY COMPANY OF TEXAS ET AL.*—Unreasonable rate on cattle from Panhandle, Tex., to Skiddy, Kans. *George D. Henry* for complainants. *A. A. Hurd* and *J. R. Koontz* for Southern Kansas Railway Company of Texas and Atchison, Topeka & Santa Fe Railway Company. *J. W. Allen* for Missouri, Kansas & Texas Railway Company. October 8, 1912. Reparation awarded for \$141.75.

4352 (U. R. No. 687). *ISELL-BROWN COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Alleged unreasonable rate on dried beans from Grand Ledge and Mulliken, Mich., to Louisville, Ky. *William N. Isbell* for complainant. *H. Streeter* for Pere Marquette Railroad Company. October 7, 1912. Complaint dismissed.

4147 (U. R. No. 688). *WILLIS E. SHELDEN v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on damaged wheat from Milwaukee, Wis., to Schoolcraft, Mich. *Willis E. Shelden* for complainant in person. *L. C. Stanley* for Grand Trunk Western Railway Company. *A. H. Lossow* for Chicago & North Western Railway Company. October 7, 1912. Complaint dismissed.

4106 (U. R. No. 689). *J. H. WINTERBOTHAM & SONS v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable switching charges on cooperage from Michigan City, Ind., to Union Stock Yards, Chicago, Ill. *Cassoday, Butler, Lamb & Foster* for complainant. *D. P. Connell* for Michigan Central Railroad Company. October 7, 1912. Reparation awarded for \$2,754.10.

4453 (U. R. No. 690). *NORTON LUMBER COMPANY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.*—Unreasonable rate on pine lumber from Boleyn, La., to Lawrence, Red Cloud, Hardy, and Lyons, Nebr. *R. A. Norton* for complainant. *Henry G. Herbel* for Texas & Pacific Railway Company; Missouri Pacific Railway Company; and St. Louis, Iron Mountain & Southern Railway Company. *J. W. Allen* for Missouri, Kansas & Texas Railway Company. *R. B. Scott*



for Chicago, Burlington & Quincy Railroad Company. October 8, 1912. Reparation awarded for \$26.57.

4328 (U. R. No. 691). ABERDEEN LUMBER COMPANY *v.* VIRGINIAN RAILWAY COMPANY ET AL.—Alleged unreasonable rates on ties from Virginian Railway stations in Virginia to points on the Pittsburgh & Lake Erie Railroad. *Charles A. Droz, jr.*, for complainant. *G. A. Wingfield* for Virginian Railway Company and Norfolk & Western Railway Company. *Miles H. England* for Baltimore & Ohio Railroad Company and Norfolk & Western Railway Company. *D. P. Connell* for Pittsburgh & Lake Erie Railroad Company. October 7, 1912. Complaint dismissed.

3944 (U. R. No. 692). PRICE CEREAL PRODUCTS COMPANY ET AL. *v.* CHICAGO & ALTON RAILROAD COMPANY ET AL.—Unreasonable rates on cereal products from Lockport, Ill., to various destinations. *Russell P. Fischer* for complainants. *W. F. Dickinson* and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company. *M. L. Bell* for El Paso & Southwestern Railway Company. *T. J. Norton* and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company. *C. C. Wright* for Chicago & North Western Railway Company. *J. D. Armstrong* for Great Northern Railway Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *F. C. Dillard* and *H. A. Scandrett* for Union Pacific Railroad Company. *James C. Jeffery* and *C. C. P. Rausch* for Missouri Pacific Railway Company. *J. B. Winston* for Chicago & Alton Railroad Company. October 7, 1912. Reparation deferred pending presentation of necessary data.

4320 (U. R. No. 693). D. W. SHULTS & COMPANY *v.* KANONA & PRATTSBURGH RAILWAY COMPANY.—Alleged unlawful demurrage charges on cars used for transportation of potatoes. *Edwin R. Root* for complainant. No appearances for defendant. October 7, 1912. Reparation denied.

4032 (U. R. No. 694). BERLIN MACHINE WORKS *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Unreasonable rates on iron and steel and other articles from various points in central freight association territory to Beloit, Wis., moving through Chicago, Ill. *O. M. Rogers* for complainant. *James Cameron* and *H. C. Martin* for Grand Trunk Railway system. *C. C. Wright* for Chicago & North Western Railway Company. *James Stillwell* for Pennsylvania Company and Pennsylvania Railroad Company. October 7, 1912. Reparation awarded for (total) \$45.95.

4366 (U. R. No. 695). UNITED STATES PACKING COMPANY *v.* SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY ET AL.—Unreasonable rate on dressed poultry from Cuero and Yoakum, Tex., to Boston, Mass. *F. G. Offenlock* for complainant. *B. M. Flippen* for St. Louis, Iron Mountain & Southern Railway Company; Texas & Pa-



cific Railway Company; and International & Great Northern Railroad Company. October 7, 1912. Reparation awarded for (total) \$575.68.

4481 (U. R. No. 696). UNITED STATES *v.* BOSTON & MAINE RAILROAD ET AL.—Unreasonable charges on steam launches from Portsmouth, N. H., to Norfolk, Va. *W. B. Crowell* and *Elvin B. Trowel* for complainant. *Charles H. Blatchford* for Boston & Maine Railroad and New York, New Haven & Hartford Railroad Company. October 8, 1912. Reparation awarded for \$35.21.

4557 (Sub-Nos. 1 and 2) (U. R. No. 697). NICHOLS & COX LUMBER COMPANY *v.* MANISTEE & NORTHEASTERN RAILROAD COMPANY ET AL.—Alleged unreasonable rates on lumber from Manistee, Mich., to Indianapolis, Jeffersonville, and Evansville, Ind. *Ernest L. Ewing* for complainant. *D. Reily* for Manistee & Northeastern Railroad Company. *H. Streeter* for Pere Marquette Railroad Company. *Edmund C. Leavenworth* for Grand Rapids & Indiana Railway Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company. October 8, 1912. Complaints dismissed.

4208 (U. R. No. 698). STREET & GRAVES *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.—Alleged unreasonable charges on cottonseed hulls from Little Rock, Ark., to Snyder, Tex. *Arthur B. Hayes* for complainants. *C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company; Missouri Pacific Railway Company; and Texas & Pacific Railway Company. October 7, 1912. Complaint dismissed.

4416 (U. R. No. 699). EASTERN STATES REFRIGERATING COMPANY *v.* SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY ET AL.—Unreasonable rate on dressed poultry from Cuero and Yoakum, Tex., to Jersey City, N. J. *William H. Parks* for complainant. No appearance for defendants. October 7, 1912. Reparation awarded for \$273.87.

4360 (U. R. No. 700). HARTMAN FURNITURE & CARPET COMPANY *v.* PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.—Alleged unreasonable rate on furniture (new) from Marion, Ind., to Chicago. *O. M. Rogers* for complainant. *James Stillwell* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company. October 7, 1912. Complaint dismissed.

3967 (U. R. No. 701). NORTHERN MERCANTILE COMPANY, LIMITED, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.—Unreasonable rate on cedar poles from Cocolalla and Sand Point, Idaho, to Idaho Falls, Idaho, via Silver Bow, Mont. *L. D. McFarland* for complainant. *E. J. Cannon* for Northern Pacific Railway Company. *John F. Reilly* for Oregon Short Line Railroad Company. October 7, 1912. Reparation awarded for \$52.

4137 and 4247 (U. R. No. 702). BERRY LUMBER & STAVE COMPANY *v.* MOBILE & OHIO RAILROAD COMPANY ET AL.—Unreasonable rates on

logs from points in Alabama to Chattanooga, Tenn. *Arthur B. Hayes* for complainant. *Charles J. Rixey, jr.*, for defendants. October 7, 1912. Reparation awarded for (total) \$269.38.

3315 (U. R. No. 703). *CONNOR LUMBER & LAND COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY*.—Alleged unreasonable rates on lumber from Laona, Wis., to points in Illinois and Iowa. *Thomas H. Gill* for complainant. *S. A. Lynde* for defendant. October 7, 1912. Complaint dismissed.

4556 (U. R. No. 704). *LUCAS E. MOORE STAVE COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY*.—Alleged unreasonable rate on staves and heading from Bryant, Torrance, and Grenada, Miss., and intermediate points to New Orleans, La. *G. F. Thomas* for complainant. *Frank W. Gwathmey* for defendant. October 8, 1912. Complaint dismissed.

4306 (U. R. No. 705). *HILL & WEBB v. IBERIA & VERMILION RAILROAD COMPANY ET AL.*—No. 4306 (Sub-No. 1). *SAME v. HOUSTON & TEXAS CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable rates on snapped corn from points in Louisiana and Oklahoma to points in Texas. *J. W. Webb* for complainant. *S. G. Reed* for Texas & New Orleans Railroad Company; Houston & Texas Central Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Iberia & Vermilion Railroad Company. *A. C. Fonda* for The Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company. October 7, 1912. Reparation awarded for (total) \$61.84.

4460 (U. R. No. 706). *CONNELLY IRON SPONGE & GOVERNOR COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rate on spent tanbark from Chicago, Ill., to Marquette, Mich. *Arthur L. Smyly* for complainant. *R. P. Patterson* for Pere Marquette Railroad Company and Manistique & Lake Superior Railroad Company. October 8, 1912. Reparation awarded for \$19.74.

4176 (U. R. No. 707). *ORANGE LUMBER COMPANY v. GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rate on yellow-pine lumber from Onalaska, Tex., to Hollis, Okla. *J. M. Simmons* for complainant. *James W. Orr* for Beaumont & Great Northern Railroad. *L. M. Hogsett* for International & Great Northern Railroad Company. *Spoonts, Thompson & Barwise* and *Wilson & Dabney* for Fort Worth & Denver City Railway Company. October 7, 1912. Reparation awarded for \$67.75.

4069 (U. R. No. 708). *CADDO RIVER LUMBER COMPANY v. CADDO & CHOCTAW RAILROAD ET AL.*—No. 4069 (Sub-No. 1). *CALCASIEU LONG LEAF LUMBER COMPANY v. LOUISIANA & PACIFIC RAILWAY COMPANY ET AL.*—No. 4069 (Sub-No. 2). *LUFKIN LAND & LUMBER COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS ET AL.*—No.



4069 (Sub-No. 3). HUDSON RIVER LUMBER COMPANY *v* LOUISIANA & PACIFIC RAILWAY COMPANY ET AL.—No. 4069 (Sub-No. 4). KING-RYDER LUMBER COMPANY *v*. LOUISIANA & PACIFIC RAILWAY COMPANY ET AL.—Unreasonable rates on yellow-pine lumber from points in Arkansas, Louisiana, and Texas to points in western Nebraska and Kansas. *J. D. Riddell* for complainants. *James C. Jeffery* and *Herbert J. Campbell* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company. *J. W. Allen* for Missouri, Kansas & Texas Railway Company. *S. W. Moore* and *F. H. Moore* for Kansas City Southern Railway Company. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. *F. C. Dillard* and *H. A. Scandrett* for Union Pacific Railroad Company; Louisiana Western Railroad Company; Houston & Texas Central Railroad Company; and Texas & New Orleans Railroad Company. October 7, 1912. Reparation awarded for (total) \$270.78.

4721 (U. R. No. 709). *E. M. Beebe v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable charges on motorcycle frame and rear wheel from St. Paul, Minn., to Easton, Pa. *E. M. Beebe* for complainant in person. No appearance for defendants. October 8, 1912. Reparation awarded for \$1.69.

4681 (U. R. No. 710). HARTMAN FURNITURE & CARPET COMPANY *v*. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.—Unreasonable rate on children's collapsible go carts from Menominee, Mich., to Chicago, Ill. *O. M. Rogers* for complainant. *A. H. Lossow* for Chicago & North Western Railway Company. *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company. *R. C. Fyfe* for Western Classification Committee. October 8, 1912. No reparation.

4655 (U. R. No. 711). CHATTANOOGA PLOW COMPANY *v*. PENNSYLVANIA COMPANY ET AL.—No. 4655 (Sub-No. 1). SAME *v*. BALTIMORE & OHIO RAILROAD COMPANY ET AL.—Unreasonable rates on plow steel from Pittsburgh, Pa., and circular plow disks, plow shapes, and harvester seats from Johnstown, Pa., to Chattanooga, Tenn. *Campbell & Coffey* for complainant. *Frank W. Gwathmey* for Norfolk & Western Railway Company and Southern Railway Company. October 8, 1912. Reparation awarded for (total) \$59.51.

4528 (U. R. No. 712). TUFFLI BROTHERS PIG IRON & COKE COMPANY *v*. COLORADO MIDLAND RAILWAY COMPANY ET AL.—Alleged unreasonable rate on pig iron from Colorado Springs, Colo., to Leadville, Colo. *C. H. Rodehaver* for complainant. *Henry T. Rogers* and *George A. H. Fraser* for Colorado Midland Railway Company. October 8, 1912. Complaint dismissed.

4508 (U. R. No. 713). D. S. PATE LUMBER COMPANY *v*. SOUTHERN RAILWAY COMPANY ET AL.—Unreasonable rates on pine lumber from Kennedy, Belk, Covin, and Fayette, Ala., to points north of Ohio River. *F. D. Porter* and *J. G. Weatherly* for complainant. *Frank*



*W. Gwathmey* for Southern Railway Company; Mobile & Ohio Railroad Company; and Cincinnati, New Orleans & Texas Pacific Railway Company. *D. P. Connell* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company. *O. W. Dynes* and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company. October 8, 1912. Reparation awarded for \$30.74.

4015 (U. R. No. 714). CORPORATION COMMISSION OF OKLAHOMA *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.—Mixed carload shipments of transit and nontransit grain and grain products. *C. B. Bee* and *George A. Henshaw* for complainant. No appearance for defendants. October 7, 1912. No reparation.

4200 (U. R. No. 715). CRAIG COMMISSION COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.—Unreasonable rate on eggs from Russellville, Ark., to St. Louis, Mo. *Guy W. Swaim* for complainant. *Henry G. Herbel* and *C. C. P. Rausch* for defendant. October 7, 1912. Complaint dismissed, as complainant suffered no damage.

NOTE.—The amount of reparation awarded in the above cases aggregates \$36,229.38.



REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF  
THE COMMISSION DURING THE TIME COVERED BY THIS  
VOLUME.

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3242. J. B. FORD COMPANY *v.* MICHIGAN CENTRAL RAILROAD COMPANY ET AL.—September 23, 1912. Reparation for \$60.29 on shipment of soda ash from Wyandotte, Mich., to Topeka, Kans., on account of excessive rate.

3517. BLODGETT MILLING COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—October 14, 1912. Reparation for \$814.61 on shipments of rye and buckwheat products from Janesville, Wis., to Denver, Colorado Springs, and Pueblo, Colo., on account of excessive rates.

3532. BAKER MANUFACTURING COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.—October 14, 1912. Reparation for \$10.17 on shipments of pig iron from Chicago, Ill., to Evansville, Wis., on account of excessive rate.

3616. EMPSON PACKING COMPANY *v.* THE COLORADO MIDLAND RAILWAY COMPANY ET AL.—October 14, 1912. Reparation for \$2,089.61 on shipments of canned goods from points in the State of Colorado to Pacific coast terminals, on account of excessive rates.

3642. SUNDERLAND BROS. COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.—October 14, 1912. Reparation for \$84 on account of unreasonable reweighing charges on carload shipments of coal at Omaha, Nebr.

3788. STRASBURG STEAM FLOURING MILLS *v.* SOUTHERN RAILWAY COMPANY.—October 14, 1912. Reparation for \$617.40 on shipments of wheat from various points in the State of Virginia, milled into flour at Strasburg, Va., and forwarded to various points in the States of North Carolina and South Carolina, on account of excessive rates.

4045. CHARLES T. PERRY & COMPANY *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.—October 14, 1912. Reparation for \$283.45 on shipments of candles from Helena, Mont., to points in the Coeur d'Alene district, Idaho, on account of excessive rates.

4152. GREER-WILKINSON LUMBER COMPANY *v.* ST LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.—October 14, 1912. Reparation for \$2,600.12 on shipments of lumber from Durnell, Mo., to Cairo, Ill., on account of excessive rate.



4159. CHAFFIN COAL COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL.—October 14, 1912. Reparation for \$192.76 by the Baltimore & Ohio Railroad Company and \$217.42 by the Hocking Valley Railway Company on shipments of coal from the Hocking Valley district, in the State of Ohio, to Manistique, Mich., and Manitowoc, Wis., on account of excessive rates.

4185. CRESCENT COAL & MINING COMPANY *v.* CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.—October 14, 1912. Reparation for \$11,887.49 on shipments of coal from mines located on the Chicago & Eastern Illinois Railroad in the State of Indiana, to Depue, Ill., on account of excessive rate.

3629. UNITED STATES LEATHER COMPANY ET AL. *v.* SOUTHERN RAILWAY COMPANY ET AL.—November 12, 1912. Reparation of \$519.42 to Unaka Tanning Company; \$284.27 to Toxaway Tanning Company; \$458.80 to Schlosser Leather Company; \$427.22 to C. C. Smoot & Sons Company; \$360.70 to Junaluska Leather Company; \$309.79 to E. P. Cover & Sons Company; \$825.61 to Burke Tanning Company; and \$96.56 to American Oak Leather Company on shipments of leather and other products of southern tanneries to northern markets, on account of excessive rates.

3816. LOVELACE LUMBER COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.—November 12, 1912. Reparation of \$20.96 on shipment of wooden tops for fruit boxes from Brewton, Ala., to Paw Paw, Mich., on account of excessive rate.

4129. BRIDGEMAN-RUSSELL COMPANY *v.* GREAT NORTHERN EXPRESS COMPANY ET AL.—November 12, 1912. Reparation of \$1,251.78 on shipments of milk from points in Minnesota and Wisconsin to Duluth, Minn., on account of excessive rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$23,412.43.

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[The number in parentheses following citation indicates where paragraph occurs or subject is considered.]

## "ABSORB."

Chamber of Commerce of New York *v.* N. Y. C. & H. R. R. R. Co. 55 (69).

ABSORPTION OF SWITCHING CHARGE. *See* SWITCHING.

## ABSTRACT QUESTION.

The Commission dismisses a complaint where the carrier has voluntarily done all that the Commission would order it to do. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27.

That a complaining steamship corporation has no vessels, and that its stock is not paid in, is no objection to its right to obtain from the Commission a ruling as to whether such company will be made a party to through routes when it is able to transport. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (186).

ACQUIESCENCE. *See* ESTOPPEL.

## "ACROSS-LAKE."

Defined. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (13).

## "ACROSS-LAKE-AND-RAIL."

Defined. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (13).

## ACT TO REGULATE COMMERCE.

### CONSTRUCTION.

The act is an aid, not a hindrance, to commerce and must be given such reasonable construction as makes to that end. *Transit case*, 340 (350).

A narrow construction of the act is not in harmony with the spirit of the act nor in keeping with the principle enunciated\* by the United States Supreme Court. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (48).

### OBJECTS OF THE ACT.

The underlying principle of the act is the elimination of unjust discrimination and extortion. *Transit case*, 340 (350).

One important purpose was to stop discrimination against the weak. *In re Rates on Salt*, 192 (194).

ADJUSTMENT. *See* DISTURBANCE OF ADJUSTMENT; PREFERENCES AND PREJUDICES.

## ADMINISTRATIVE BODY.

The Commission is an administrative body. *In re Pipe Lines*, 1 (3).

## ADMINISTRATIVE RULINGS.

Fourth Section Circular No. 1, followed. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (155).

Tariff Circular 18-A, Rule 69, adhered to. *Parker v. S. P. Co.* 681.

Tariff Circular 18-A, Rule 76-A, discussed. *Transit case*, 340 (344).

Special order No. 3, adhered to. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (366).

## ADMISSION.

Willingness of defendant to award reparation on basis of rate which it is unwilling to maintain in future does not constitute an admission that rate charged was unreasonable. *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321 (322).

ADVANCE IN RATES. *See also* BURDEN OF PROOF; REASONABLE RATES.

## IN GENERAL.

Where rates are too low and an increase is justified, the advance should be made in such a manner as not to discriminate. *In re Advances on Ice*, 660 (663).

That a readjustment between adjoining towns is necessary is not in itself a justification for advancing rates to one of them. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (222).

Where the cancellation of a joint rate leaves a higher combination in effect, this is an advance which the carrier must justify. *In re Advances on Coal*, 43.

An advance made in order to comply with an order of the Commission to remove a discrimination between localities, held to be justified. *In re Advances on Lumber*, 686.

Carrier held to be justified in advancing rates in order to bring the rates into a proper relationship. *In re Advances on Lumber*, 686.

Where a carrier was receiving sufficient compensation prior to an advance, advanced rates held excessive. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (222).

Where rates were advanced to bring them into line with western classification and the advanced rates were lower than those prescribed by the Commission in another case, held that the advance was justified. *In re Advances on Cooperage*, 656 (659).

Advance in rates resulting from discontinuance of reciprocal absorption of switching charges, condemned. *In re Advances on Sand and Gravel*, 249 (250).

Order of suspension against tariff changing transit rates, vacated. *In re Advances on Logs*, 683.

Canceling a commodity rate and reestablishing a higher class rate in order to remove a discrimination and bring rates into proper relationship, held to be justified. *In re Advances on Apples*, 38 (42).

The act gives the Commission power to inquire into the propriety of an advance, and it is the duty of the Commission to determine the reasonableness of the advances and their propriety as well. *In re Advances on Barley*, 664 (669).

Where the exclusion of a commodity from the application of a reciprocal switching arrangement results in increased charges, the carrier must justify the advance. *In re Advances on Ice*, 660.

The mere assertion that an advance is necessary to meet the demands of a refrigerator car company for use of its equipment is no justification for advancing refrigeration charges. *In re Advances on Fruits and Vegetables*, 164 (165).

## ADVANCES PERMITTED.

Advances in rates held to be justified. *In re Advances on Apples*, 38 (42); *In re Advances on Cooperage*, 656 (659); *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220; *In re Advances on Lumber*, 686; *In re Advances on Cement*, 209.



## ADVANCE IN RATES—Continued.

## PARTIAL ADVANCE PERMITTED.

Rates protested against condemned, but rates against which there was no protest, allowed to go into effect. *In re Advances on Fruits and Vegetables*, 164.

## ADVANCES CONDEMNED.

Advanced rates not justified and not permitted to be put into effect. *In re Advances on Ice*, 660; *Arlington Heights Fruit Exchange v. S. P. Co.*, 671; *In re Advances on Barley*, 664; *In re Advances on Cement*, 290; *In re Advances on Coal*, 43; *Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co.* 158 (159); *In re Advances on Lime*, 170; *In re Advances on Sand and Gravel*, 249; *Deming Lumber Co. v. S. P. Co.*, 598 (599).

ADVANTAGES.\* *See also* PREFERENCES AND PREJUDICES; DISCRIMINATION; COMMERCIAL AND ECONOMIC CONDITIONS.

Neither Commission nor carrier can deprive a city of its natural advantages. *In re Advances on Cooperage*, 656 (659).

Not province of Commission to equalize localities so that they may compete in a common market. *Slider v. S. Ry. Co.* 312 (313).

Commission does not by fixing rates attempt to overcome advantages which one city may have by reason of its natural or geographical location. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (597).

Not province of Commission to prescribe rates to enable shippers to overcome natural disadvantages of location. *National Refining Co. v. M. P. Ry. Co.* 315 (317).

It is beyond question that neither the railroads nor the Commission may adjust rates in such way as to deprive a place of its natural advantages or give it artificial advantages which are withheld from a competitor; and the same rule applies as to advantages acquired through enterprise and investment. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (70).

That a carrier has by rate adjustment as to one commodity enabled a manufacturer or producer to overcome a natural disadvantage of location, is not in itself sufficient ground for the Commission to establish a like adjustment as to another commodity. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (597).

Having located at a particular place, a shipper must be deemed to have accepted that point with its natural disadvantages. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (597).

A city is entitled to the benefits arising from its natural location. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (597); *Commercial Club of Superior v. G. N. Ry. Co.* 96 (106).

A city that is large and prosperous by virtue of natural advantages may justly be given the benefit of its location, even though that may result in apparent discrimination against smaller intermediate points; but the mere fact that a market is important and a large consumer is not of itself this kind of a natural advantage. *In re Rates on Salt*, 192 (194).

Advantages of location, discussed. *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552; *Iowa v. A. C. L. R. R. Co.* 134 (136); *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122; *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (84).

## "ALL RAIL."

Defined *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (12).

**ALLOWANCES.** *See also* DIVISION OF THROUGH RATES; ELEVATION; SWITCHING.

While the Commission believes that the payment of all elevation allowances and the giving of all free elevation should be prohibited, it fully accepts the United States Supreme Court decision holding that elevation allowances may be made. Scale of charges for commercial and transportation elevation recommended. *In re Elevation Allowances*, 197 (204).

Whether an allowance in the form of additional free time is just as unlawful as one in the form of money, not decided. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (30).

The Commission is not prepared to direct an additional time allowance to industries performing switching services from their plants. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (30).

Allowance in lieu of lighterage and floatage paid to shippers at Baltimore.

Chamber of Commerce of New York *v. N. Y. C. & H. R. R. R. Co.* 55 (66).

**AMBIGUOUS TARIFFS.** *See* TARIFFS.**ANTITRUST.** *See* MONOPOLIES.**ANY QUANTITY RATES.**

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**ARRIVAL.** *See* NOTICE.**ATLANTIC SEABOARD TERRITORY.**

Described. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (573).

**AVERAGE DISTANCE.** *See* DISTANCE.**AVERAGE RULE.** *See* DEMURRAGE.**BACKLOADING.**

*Commercial Club of Superior v. G. N. Ry. Co.* 96 (101).

**BASING POINTS.**

Discussed. *Sioux City Commercial Club v. A. & S. R. R. R. Co.* 177 (178); *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50 (51).

**BASING RATES.**

Discussed. *In re Advances on Lumber*, 686 (689); *Davis v. St. L. I. M. & S. Ry. Co.* 309; *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50 (51).

**BELT LINE.** *See* INDUSTRIAL ROADS; SWITCHING.**BILL OF LADING.** *See also* RECEIPTS.

Binding effect upon carrier of icing instructions contained in bill of lading, discussed. *Jackson & Perkins v. S. P. Co.* 323.

*In so far as a bill of lading establishes a rule, regulation, or practice of transportation which is obligatory upon the shipper, the Commission has jurisdiction over its provisions.* *Larkin Co. v. E. & W. T. Co.* 645 (647).

Shipping on through bills of lading held to be evidence of a common arrangement for a continuous carriage between a rail and a water carrier. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

Eastern carriers required to honor through bills of lading issued by western carriers via an independent lake line. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (190).

**BLANKET ARBITRARY.**

*R. R. Com. of Oregon v. S. P. Co.* 273 (274).

**BLANKET RATES.** *See also* GROUP RATES; ZONE RATES.

Blanket rates discussed. In re Express Rates, 380 (429); In re Rates on Salt, 192 (193); In re Advances on Cement, 209 (211); Lumbermen's Exchange of St. Louis *v. A. & S. R. R. R. Co.* 220 (222); R. R. Com. of Oregon *v. S. P. Co.* 273 (274).

**BLOCK SYSTEM.**

Block system of express rates prescribed by Commission. In re Express Rates, 380 (413).

**BOATS.** *See* WATER CARRIERS.**"BOON OF FREE COMPETITION."**

Chamber of Commerce of New York *v. N. Y. C. & H. R. R. R. Co.* 55 (63).

**BOTH DIRECTIONS.**

Bridge toll higher in one direction than in the reverse direction resulted in undue prejudice. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331.

No justification shown for higher rate westward than eastward. In re Advances on Cement, 209 (211).

**BRANCH LINES.** *See also* INDUSTRIAL ROADS.

That a given point, otherwise similarly circumstanced, is located on a branch line, while other points enjoying lower rates are located on main lines, does not create dissimilarity of circumstances. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (48).

Branch-line points held to be unduly discriminated against as compared with other branch-line points. *Johnson & Son v. C. & O. Ry. Co.* 698.

**BREAK-BULK BOATS.**

Escanaba Business Men's Asso. *v. A. A. R. R. Co.* 11.

**BREAKING RATES.**

Chicago is a natural point for breaking rates. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (596).

That trains are broken at a given point seems to be of probative value in determining the reasonableness of a rate. *Johnson & Son v. C. & O. Ry. Co.* 698 (701).

**BRIDGES.**

A bridge company, which does not hold itself out as a common carrier, which has no rolling stock or motive power, whose structure is not rented to or operated in connection with a railroad and over whose structure no freight has been transported, is not a common carrier subject to the act, though some passengers were carried over it in the cars, and by the motive power, of a street railway company. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

Complaint seeking establishment of routing for interstate electric passenger cars over a viaduct that is owned by a bridge company not subject to the act, dismissed for want of jurisdiction. *Kansas City v. K. C. V. & T. Ry. Co.* 22.

Unless the circumstances are dissimilar a carrier may not arbitrarily absorb a bridge charge at one river crossing and refuse to do so at another. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (336).

Absorption of bridge charge on traffic to Louisville, Ky., on the south bank of the Ohio River, and refusal to absorb such charge on traffic to New Albany, Ind., on the north bank of said river, while contemporaneously such charge was absorbed at other north-bank points, subject New Albany to undue prejudice. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (339).

Where the amount of a bridge toll is added to the division accruing to one of several connecting carriers, the settlement of the bridge toll is



**BRIDGES—Continued.**

a matter with which the shipper has no connection. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (332).

Bridge tolls discussed. In re *Advances on Lumber*, 686 (696); *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (225).

Bridge arbitrary. *Slider v. S. Ry. Co.* 312.

**BULKED SHIPMENTS.** *See CONSOLIDATED SHIPMENTS.*

**BULKY SHIPMENTS.**

Express rules concerning bulky shipments modified and reasonable rules prescribed. In re *Express Rates*, 380 (410).

**BUNCHING CARS.** *See DEMURRAGE.*

**BURDEN OF PROOF.**

Where rates were reduced at one point while no reduction was made at a related point, the burden was on the carrier to justify such adjustment. In re *Advances on Cement*, 290.

The burden to justify an advance in rates rests upon the carrier. *Deming Lumber Co. v. S. P. Co.* 598 (599); In re *Advances on Sand*, 249 (253); *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220; *R. R. Com. of Oregon v. S. P. Co.* 273 (274); In re *Advances on Barley*, 664 (669); *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672); In re *Advances on Fruits and Vegetables*, 164 (166).

Carrier must prove that the advanced rate is reasonable and that it does not result in unjust discrimination or undue prejudice. In re *Advances on Barley*, 664 (670).

**BURDEN OF TRANSPORTATION.** *See MINIMUM RATES; COST OF SERVICE.*

**BY-PRODUCTS.** *See TRANSIT PRIVILEGES.*

**CAPITALIZATION.**

The capitalization of a corporation is not a measure of the reasonableness of its rates. In re *Express Rates*, 380 (421).

**CAR.** *See DOUBLE-DECK CARS.*

**CAR DISTRIBUTION.**

Rules and practices respecting car distribution criticized. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213.

Principles announced in *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C. 39, followed. *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 618 (619).

**CAR EARNINGS.** *See REVENUE.*

**CAR FERRY.**

*Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.

**CAR OFF LINE.** *See also EMBARGO.*

*Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122 (123).

**CAR SERVICE.** *See DEMURRAGE.*

**CAR SHORTAGE.** *See EMBARGO; CAR DISTRIBUTION.*

**CAR SIZE.**

When a shipment requires a car of greater capacity than can be furnished by the carrier, two or more smaller cars should be furnished and charges assessed upon the basis of actual weight of shipment, but not less than the minimum weight prescribed in the tariff for a carload. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

**CARGO RATES.** *See WATER CARRIERS.*

**CARLOAD AND LESS THAN CARLOAD.**

No proof that carrier prevents shipping of certain article in carload lots to one locality and in less-than-carload lots to other localities. *Lesinsky Co. v. A. T. & S. F. Ry. Co.* 620.

**CARLOAD AND LESS THAN CARLOAD—Continued.**

The Commission disapproves a rule permitting the application of the balance of a through carload rate on a less-than-carload quantity moving from a transit point. *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552 (556).

Rule of express companies governing bulky and carload shipments modified by Commission. In *re Express Rates*, 380 (410).

**CARRIERS.****COMMON CARRIERS.**

A common carrier is one who holds himself out as ready to engage in transportation for hire as a public employment; and generally the liability of a common carrier does not attach to one who does not so hold himself out. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (25).

A common carrier may limit the character of the commodities it wishes to transport. *Flour City S. S. Co. v. L. V. R. R.* 179 (185).

So long as a road holds itself out as a common carrier and trunk lines make joint rates with it, innocent third parties have a right to assume that the road is what it purports to be. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (156).

A common-carrier pipe line is not divested of its common-carrier status by reason of the fact that such pipe line was built over its privately acquired right of way. In *re Pipe Lines*, 1.

That a pipe line does not exercise the right of eminent domain does not take it out of the common-carrier class. In *re Pipe Lines*, 1 (9).

A pipe line does not become a common carrier merely because it uses a public highway for its right of way. In *re Pipe Lines*, 1.

The utilization by a pipe line of the right of way of a common-carrier railroad does not of itself impress upon that pipe line the obligations of a common carrier. In *re Pipe Lines*, 1.

The transfer by a common-carrier pipe line to a private corporation of a portion of its property theretofore used in its common-carrier operations, but not located in the state wherein it was incorporated as a common carrier, does not release that property from the obligations of a common carrier. In *re Pipe Lines*, 1.

Abandonment of a carrier of common-carrier operations, discussed. In *re Pipe Lines*, 1 (10).

Lines of interstate carriers are public highways, the use of which can not be restricted by railroad companies, regardless of the rights of shippers. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (615).

Each carrier owes a duty to the entire public, and each owes a peculiar duty to the persons and communities which it directly serves and which are dependent upon it. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).

While recognizing the right of the carriers to conserve the interests of the ports and territories served by them, the Commission can not regard the carriers as one great and single system. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

**BRIDGES.**

Bridge company held not to be a common carrier subject to the act. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

## CARRIERS—Continued.

## EXPRESS COMPANIES.

Express companies are subject to the act. *In re Express Companies*. 380 (387).

## INDUSTRIAL ROADS.

A road is not divested of its common-carrier status and as such subject to the act, by reason of a common ownership of such road and of an industry that furnishes the greater part of its tonnage. *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (643); *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *McCloud River Lumber Co. v. S. P. Co.* 89 (94).

## PIPE LINES.

All pipe lines carrying oil from one state to another are considered and deemed common carriers subject to the act. *In re Pipe Lines*, 1 (4).

## STREET RAILROADS.

Street railways engaged in interstate commerce are subject to the act. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26); *Bitzer v. W.-V. Ry. Co.* 255; *Ford v. W.-V. Ry. Co.*, 632.

## WATER CARRIERS.

Ocean rates are not subject to the jurisdiction of the Commission. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).  
Lake steamship company, under a common arrangement with a railroad company, held to be subject to the act. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

CONNECTING CARRIERS. *See also SWITCHING.*

The acceptance by a railroad of a given division of a joint rate only on traffic transported via railroad-owned lake steamship lines does not constitute the discrimination against connecting carriers prohibited by section 3. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (189).

A freight depot owned and maintained by a carrier is a terminal facility for use in handling business from its own line and can not, under section 3, be used for handling business from other lines without its consent. *R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292 (295).

## CARRIER'S INTEREST.

Boston lines may make such rates to and from Boston as their interests demand, subject only to the limitation that the rates must be reasonable; that they may not carry that traffic at less than cost of service and so unduly burden other traffic, and may not unjustly discriminate against other points which they serve or in whose traffic they participate. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

CHARGES. *See REASONABLE CHARGES.*

## CHARGING WHAT TRAFFIC WILL BEAR.

"The richest example" of the charging-what-traffic-will-bear theory. *In re Express Rates*, 380 (428).

## CIRCUITOUS ROUTES.

In disposing of fourth-section applications, covering either passenger or freight rates, a line is ordinarily treated as circuitous if it exceeds the direct line in mileage by not less than 15 per cent. The Commission does not hold that this rule should be one of universal application. It is possible that other elements besides mere distance should be considered and that the disabilities of a particular line might be such as would justify a higher intermediate charge, even though the distance were no greater. *In re Rates on Salt*, 192 (195).



**CIRCUITOUS ROUTES—Continued.**

A route only 4 per cent longer than the short line is not markedly circuitous. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (242).

Circuitous routes discussed. In re *Advances on Barley*, 664 (666); *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50 (52).

**CIRCUMSTANCES AND CONDITIONS. See also PREFERENCES AND PREJUDICES; LONG AND SHORT HAUL.**

More favorable circumstances justify lower rates. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (576).

That one point is a branch-line point and other points are main-line points does not of itself create a dissimilarity of circumstances justifying the extension of terminal rates to the latter while refusing such rates to the former. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (48).

**CLAIMS.**

The Commission has no jurisdiction to direct the payment of damage claims since a failure to pay is not a violation of the act. *Larkin Co. v. E. & W. T. Co.* 645 (646).

Reasonable rule for adjustment of claims against express companies indicated by Commission. In re *Express Rates*, 380 (396, 412).

**CLASS AND COMMODITY RATES.**

The substitution of higher class rate on apples in lieu of commodity rates not found unlawful. In re *Advances on Apples*, 38.

Rule of express companies providing that the publication of a commodity rate removes the application of the classification rate not found unreasonable. In re *Express Rates*, 380 (412).

Where both class and commodity rates on any commodity are in effect the commodity rate, being specific, takes the article out of the classification and becomes the only lawful rate. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550 (551).

The relation of import rates as between New York and Boston applies to both class and commodity rates. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 674 (677).

**CLASSIFICATION See also COMPARATIVE RATES; LEGAL RATES.**

A new and simple classification of express traffic prescribed by Commission. In re *Express Rates*, 380.

Carriers are not required to disregard differences in classification. *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

Decimal system of classification discussed. In re *Express Rates*, 380 (403).

The concurrent maintenance of rates under two classifications at Bristol is accompanied by a tariff notation that the rates under the classification which makes the lower charges will apply. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (375).

The application of one and one-half first-class rating on bottle-washing machines shipped from Lynn, Mass., to San Francisco, Cal., found unreasonable. *Western Traffic Asso. v. B. & M. R. R.* 592.

Electrotype-plate rate from Cincinnati to San Francisco held unreasonable to extent that it exceeded the second-class rate. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (559).

Rough iron castings in sacks, from Beaver Dam, Wis., to Stockton, Cal., are entitled to the fourth-class rate. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550.

**CLEARING HOUSE.**

Clearing house for express companies recommended by Commission. In re *Express Rates*, 380 (392).

## COAST RATE GROUP.

McCloud River Lumber Co. *v.* S. P. Co. 89.

COLLAPSIBLE BUNKER CARS. *See* LOADING.

## C. O. D. SHIPMENTS.

Express companies are entitled to some compensation for acting as collection agent. Returns from collections should be made within 24 hours.

In re Express Rates, 380 (409).

## COLLECTION OF CHARGES.

Where a delivered express package has not been prepaid the carrier must look in the first instance to the consignee for payment. In re Express Rates, 380 (391).

In event of failure or neglect of forwarding agent to assess proper charges in first instance the express company should first look to the consignor.

In re Express Rates, 380 (406).

COMBINATION RATES. *See* THROUGH RATES.

## "COMMERCE."

Defined. In re Pipe Lines, 1 (7).

## COMMERCIAL AND ECONOMIC CONDITIONS.

It is not the function of the Commission or of the carriers to equalize economic conditions. *Boileau v. P. & L. E. R. R. Co.* 129 (133).

Neither the Commission nor the carrier has any right to undertake to apportion traffic between rival ports or cities. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

It is not for the Commission to say which mines shall be worked and which shut down, who shall ship lake-cargo coal and who shall not. *Boileau v. P. & L. E. R. R. Co.* 129 (132).

That a complaining manufacturer must bring its coal from a distance is a disadvantage which the Commission does not equalize by rate adjustment. *Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co.* 158 (160).

There is no economic reason why lumber should be shipped in carloads into St. Louis and again reshipped in carloads to consuming points. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (225).

A shipper's commercial needs can not be made the basis of a finding that a rate is unreasonable. *Slider v. S. Ry. Co.* 312 (313).

The existence of an option market at one place and the absence of it at another place is not a proper consideration in the relative adjustment of rates. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (71).

Commission can not make the needs of the shipper the basis for reasonable rates. In re Advances on Coöperage, 656 (659).

That a city is recognized as a commercial center is no justification for giving it unduly preferential rates. *Bowling Green Business Men v. L. & N. R. R. Co.* 228.

There is an economic waste in every unnecessary unloading, and every transit privilege costs the carriers granting it something. In re Advances on Barley, 664 (667).

COMMERCIAL ELEVATION. *See also* ELEVATION.

Defined. In re Elevation Allowances, 197 (199).

COMMISSION. *See* INTERSTATE COMMERCE COMMISSION.

COMMISSION MERCHANTS. *See* PARTIES.

## COMMISSIONS.

Shippers who employ express companies to collect for them must expect to pay for this service. In re Express Rates, 380 (409).

## COMMODITIES.

- Acid phosphate. *See* Phosphate.
- Acidulated rock. *See* Rock.
- Addressing machines. *See* Machines.
- Anthracite coal. *See* Coal.
- Apples. Missouri River points to Minneapolis and St. Paul, Minn., and other points in that territory, 38.
- Asparagus. Comparative rate, 560 (565).
- Automobile. El Paso, Tex., to Los Angeles, Cal. 306.
- Barley. California to Minneapolis, Minn., and Chicago, Ill. 664.
- Barley. North Atlantic ports. Differentials, 55.
- Barley. Transit privilege, 340.
- Barrels. Utah from Chicago, Ill., St. Louis, Mo., and other points, 656 (657).
- Benzine. Packing, 542.
- Bituminous coal. *See* Coal.
- Bolts. Memphis, Tenn. Transit privilege, 602.
- Bolts, Nashville, Tenn. Transit privilege, 683.
- Bolts, spoke. Memphis, Tenn., from Arkansas, 547.
- Bottle-washing machines. *See* Machines.
- Buckets, well. Utah from Chicago, Ill., St. Louis, Mo., and other points, 656 (657).
- Butter. Bowling Green, Ky., to Louisville, Ky., 228 (231).
- Cabbage. Comparative rate, 560 (563).
- Cake, cottonseed. Oklahoma to Kansas City, Mo., and other points, 327.
- Canned goods. Magnolia, Ark., to Fort Smith, Ark. 648.
- Cantaloupes. Florida and other points to markets north of Potomac River, 560.
- Cantaloupes. Imperial Valley, Cal., and other points to eastern destinations. Icing charges, 651; 679.
- Castings, rough iron. Beaver Dam, Wis., to Stockton, Cal. 550.
- Cattle. Bowling Green, Ky., to Chicago, Ill. 228.
- Cement. Ada, Okla., to Shreveport, La. 158.
- Cement. Egypt, Pa., to Campbell Hall, N. Y. 622.
- Cement. Kansas gas belt to Missouri, 209.
- Cement. Union Bridge and Security, Md., to Virginia and West Virginia, 290.
- Cheese. Plymouth and Fox River territory, Wis., to El Paso, Tex. 620.
- Class rates. Albert Lea, Minn., from Atlantic seaboard, 125.
- Class rates. Atlanta, Wis., to and from Bruce, Wis., when for beyond, 634.
- Class rates. Boston, Ga., from New York and Ohio River crossings, 50.
- Class rates. Bowling Green, Ky., from various points, 228.
- Class rates. Escanaba, Mich., from trunk line and c. f. a. territory, 11 (13).
- Class rates. Galveston, Tex., to Wichita, Kans., and Oklahoma City, Okla., and between other points, 570.
- Class rates. Morristown, Tenn., to and from New York City and related points, 372.
- Class rates. North Atlantic ports. Differentials, 55.
- Class rates. San Francisco, Cal., from Portland, Oreg., and Willamette River, 34.
- Class rates. Santa Rosa, Cal., from the east, 46.
- Class rates. Washington, D. C. Free delivery, 629.
- Class rates. Wichita, Kans., from Galveston, Tex., and from Atlantic seaboard, 570.



## COMMODITIES—Continued.

- Class rates. Willamette Valley from eastern territory, via Portland, Oreg. 273.
- Coal. Colorado. Embargo, 618.
- Coal. Excelsior, Ark. Switching, 292.
- Coal. Lake, Ill., to Iowa. Weight deductions, 302.
- Coal. Marissa, Ill., to Fort Worth, Tex. 624.
- Coal. Nassau, Ill., from Brazil, Ind. 149.
- Coal. New Albany, Ind., to St. Louis, Mo., and East St. Louis, Ill. 312.
- Coal. Pittsburgh, Pa., district to Ashtabula, Ohio, 129.
- Coal. Utah mines to Idaho, Montana, Washington, and Oregon, 213.
- Coal, anthracite. Taylor, Pa., to Hoboken, N. J. 140.
- Coal, bituminous. Herrin, Ill., Wheatecroft and Sturgis, Ky., Piper Mines and Brilliant, Ala., to Grenada, Miss. 318.
- Coal, bituminous. Pittsburgh vein No. 8, district of Ohio, to Lake Huron and Cleveland, Ohio, 280.
- Coal, bituminous. Springfield, Ill., and southern Illinois mines to Kansas and Nebraska, 43.
- Coal, lake-cargo. Hocking district, Ohio, to Toledo, Ohio, 244.
- Coal screenings. *See* Screenings.
- Coke. Carondelet, Mo., from Page, W. Va., and other points, 360.
- Commodity rates. Boston, Ga., from New York and Ohio River crossings, 50.
- Commodity rates. Bowling Green, Ky., from various points, 228.
- Commodity rates. Escanaba, Mich., from trunk line and c. f. a. territory, 11 (13).
- Commodity rates. Morristown, Tenn., to and from New York City and related points, 372.
- Commodity rates. North Atlantic ports, 55; 78.
- Commodity rates. San Francisco, Cal., from Portland, Oreg., and Willamette River, 34.
- Commodity rates. Santa Rosa, Cal., from the east, 46.
- Cooperage. Utah from Chicago, Ill., St. Louis, Mo., and other points, 656.
- Corn. North Atlantic ports. Differentials, 55.
- Corn. Transit privilege, 340.
- Cotton waste. *See* Waste.
- Cotton-compress machinery. *See* Machinery.
- Cotton-factory sweepings. *See* Sweepings.
- Cottonseed. *See also* Cake, Hulls, Linters, Meal, and Oil.
- Cottonseed. New Roads, La., from southern Arkansas, 167.
- Cottonseed and products. East St. Louis, Ill., from Arkansas and other states, 588.
- Doors. Cleveland, Ohio, to Oshkosh, Wis. 626.
- Dressed poultry. *See* Poultry.
- Durum wheat. *See* Wheat.
- Eggs. Bowling Green, Ky., to New York, N. Y. 228.
- Electrotype plates. *See* Plates.
- Excelsior. St. Paul, Minn., to Chicago, Ill., and other destinations, 606.
- Explosives. Packing, 542.
- Express packages. *See* Packages.
- Feed, mixed. Memphis, Tenn. Transit privilege, 609.
- Fertilizer. Boston, Ga., from Montgomery, Ala. 50.
- Fertilizer. Monticello, Ark., to Louisiana, 309 (310).

## COMMODITIES—Continued.

- Flax tow. Comparative rate, 606.
- Flour. Minneapolis, Minn., to New York, N. Y. 179.
- Flour. Watertown, Wis., Minneapolis, Minn., and Chicago, Ill., to eastern destinations, 594.
- Forest products. Nashville, Tenn. 683.
- Fruit. *See also* Apples, Oranges, and Peaches.
- Fruit. Maryland, West Virginia, Pennsylvania, Delaware, and New Jersey. Refrigeration, 164.
- Gasoline. Packing, 542.
- Glassware. Morristown, Tenn., from Pittsburgh, Pa., and Wheeling, W. Va. 372.
- Glucose. Chicago, Ill., to New York, N. Y. 134.
- Grain. *See also* Barley, Corn, Rye, and Wheat.
- Grain. Transit privilege, 340; 552.
- Grain. Memphis, Tenn., to Mississippi River valley. Transit privilege, 609 (613).
- Grain. Missouri and Ohio Rivers. Elevation allowances, 197.
- Grain. North Atlantic ports. Differentials, 55.
- Grain. Omaha, Nebr., from South Dakota, 122.
- Grain. Sandusky, Ohio. Transit privilege, 287.
- Grain. Superior and Milwaukee, Wis., and Duluth, Minn., from North and South Dakota, Minnesota, and Iowa, 96.
- Grain products. Mixed shipments. Transit privilege, 552.
- Grain products. Memphis, Tenn. Transit privilege, 609.
- Grain products. Superior, Wis., to Atlantic seaboard, 96.
- Gravel. New Albany, Ind., to Louisville, Ky. 312.
- Gravel. Wisconsin to Chicago, Ill. 249.
- Hardwood lumber. *See* Lumber.
- Hay. Kansas City, Mo., to Birmingham, Ala. 253.
- Headings, barrel. Decatur, Ala., to central, eastern, southeastern, and western markets, and Gulf ports, 81.
- Hides. New Albany, Ind., from southern points, 331.
- Hogs. Bowling Green, Ky., to Chicago, Ill. Double-deck cars, 228.
- Hulls, cottonseed. Monticello, Ark., to Louisiana, 309.
- Hulls, cottonseed. Oklahoma to Kansas City, Mo., and other points, 327.
- Ice. Chicago, Ill. Switching, 660.
- Inflammable articles. Packing, 542.
- Insect poison. Pullman Junction, Ill., to Portland, Ore. 545.
- Iron castings. *See* Castings.
- Iron, manufactured and pig. New Albany, Ind., from southern points, 331.
- Kegs. Utah from Chicago, Ill., St. Louis, Mo., and other points, 656 (657).
- Lake-cargo coal. *See* Coal.
- Lemons. California to Oregon, Washington, and Idaho, 671.
- Lime. Texas to Louisiana, 170.
- Lime-sulphur solution. Pullman Junction, Ill., to Portland, Ore. 545.
- Linters, cottonseed. Oklahoma to Kansas City, Mo., and other points, 327.
- Liquid sheep-dip. *See* Sheep-dip.
- Logs. Memphis, Tenn. Transit privilege, 602.
- Logs. Nashville, Tenn. Transit privilege, 683.
- Lumber. Comparative rate, 560 (566).
- Lumber. Through routes and rates, 161.
- Lumber. Arkansas to New Albany, Ind. 331.

## COMMODITIES—Continued.

- Lumber. Atlanta, Wis., to Bruce, Wis., for beyond, 634.
- Lumber. Cairo, Ill., and St. Louis, Mo., from southeastern points, 686.
- Lumber. El Paso, Tex., to Las Cruces, N. Mex. 297.
- Lumber. Gill, W. Va., and other points to c. f. a. territory, 698.
- Lumber. Kansas City, Mo. Switching charges, 205.
- Lumber. Laona Junction, Wis. Through routes and joint rates, 639 (640).
- Lumber. McCloud, Cal., to eastern destinations, 89.
- Lumber. Memphis, Tenn. Transit privilege, 602.
- Lumber. Nashville, Tenn. Transit privilege, 683.
- Lumber, hardwood. St. Louis, Mo., from the southwest, 220.
- Lumber, pine. Deming, N. Mex., from Louisiana and Texas, 598.
- Lumber, yellow-pine. St. Louis, Mo., from the southwest, 220.
- Lumber, yellow-pine. Sioux City, Iowa, from Arkansas, Louisiana, Mississippi, and Texas, 177.
- Machinery, cotton-compress. New Orleans, La., to Marshall, Tex. 304.
- Machines, addressing. La Crosse, Wis., and Chicago, Ill., to Portland, Oreg. 299.
- Machines, tub bottle-washing. Lynn, Mass., to San Francisco, Cal. 592 (593).
- Marble. Little Rock, Ark. Switching, 292.
- Meal, cottonseed. Monticello, Ark., to Louisiana, 309.
- Meal, cottonseed. Oklahoma to Kansas City, Mo., and other points, 327.
- Melons. *See* Cantaloupes and Watermelons.
- Mixed feed. *See* Feed.
- Molasses. Comparative rate, 134 (137).
- Naphtha. Packing, 542.
- Nursery stock. California to Newark, N. Y. Refrigeration, 323.
- Oats. North Atlantic ports. Differentials, 55.
- Oil. Pipe lines, 1.
- Oil, cottonseed. Oklahoma to Kansas City, Mo., and other points, 327.
- Oranges. Comparative rate, 560 (563).
- Oranges. Bowling Green, Ky., from Jacksonville, Fla. 228.
- Packages, express. 380.
- Peaches. Comparative rate, 560 (564).
- Pedestal. Buffalo, N. Y., to Eau Claire, Wis. 645.
- Petroleum. Comparative rate, 327 (329).
- Petroleum and products. Coffeyville, Kans., to Hastings, Nebr., and Sedalia, Mo. 315.
- Phosphate, acid. Boston, Ga., from Montgomery, Ala. 50.
- Phosphate, acid. Charleston, S. C., to Durham, N. C. 600.
- Phosphate rock. Charleston, S. C., to Durham, N. C. 600.
- Pig iron. *See* Iron.
- Pine lumber. *See* Lumber.
- Planotypes. La Crosse, Wis., and Chicago, Ill., to Portland, Oreg. 299.
- Plates, electrotpe and stereotype. Cincinnati, Ohio, to San Francisco, Cal. 557.
- Poultry, dressed. Bowling Green, Ky., to New York, N. Y. 228.
- Printographs. La Crosse, Wis., and Chicago, Ill., to Portland, Oreg. 299.
- Rock, acidulated. Charleston, S. C., to Durham, N. C. 600.
- Rye. *See also* Flour.
- Rye. North Atlantic ports. Differentials, 55.
- Rye. Watertown, Wis., Minneapolis, Minn., and Chicago, Ill., to eastern destinations, 594.



## COMMODITIES—Continued.

- Salt. Kansas to St. Louis, Mo., and Mississippi River, 102.  
 Sand. New Albany, Ind., to Louisville, Ky. 312.  
 Sand. Wisconsin to Chicago, Ill. 249.  
 Screenings, coal. Chicago, Ill., to Platteville, Wis. 321.  
 Sheep-dip, liquid. Pullman Junction, Ill., to Portland, Oreg. 545.  
 Sirup. Comparative rate, 134 (137).  
 Spoke bolts. *See* Bolts.  
 Spokes. Memphis, Tenn. Transit privilege, 602.  
 Staves, barrel. Decatur, Ala., to central, eastern, southeastern, and western markets, and Gulf ports, 81.  
 Stereotype plates. *See* Plates.  
 Sweepings, cotton-factory. Cordova, Ala., to Augusta, Ga.; and from Lindale, Ga., to Paducah, Ky. 264.  
 Sugar. Boston, Ga., from New Orleans, La. 50.  
 Sugar. Bowling Green, Ky., from New Orleans, La. 228.  
 Sugar. New Orleans, La., to Battle Creek, Mich. 604.  
 Sulphur. *See* Lime-sulphur.  
 Tobacco. Bowling Green, Ky., to various points, 228.  
 Tub bottle-washing machines. *See* Machines.  
 Vegetables. *See also* Cabbage and Asparagus.  
 Vegetables. Comparative rate, 560 (563).  
 Vegetables. Maryland, West Virginia, Pennsylvania, Delaware, and New Jersey. Refrigeration, 164.  
 Waste, cotton. Augusta, Ga., to Clifton, Ariz. 264.  
 Watermelons. Florida and other points to markets north of Potomac River. 560.  
 Wheat. *See also* Flour.  
 Wheat. North Atlantic ports. Differentials, 55.  
 Wheat. Transit privilege, 340.  
 Wheat. Sandusky, Ohio. Transit privileges, 287.  
 Wheat. Watertown, Wis., Minneapolis, Minn., and Chicago, Ill., to eastern destinations, 594.  
 Wheat, durum. Comparative rate, 96 (109).  
 Writerpresses. La Crosse, Wis., and Chicago, Ill., to Portland, Oreg. 299.  
 Yellow-pine lumber. *See* Lumber.

## COMMODITIES CLAUSE.

- An apparent disregard of the commodities clause. Consolidated Fuel Co. v. A. T. & S. F. Ry. Co. 213 (218).

## COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT.

- The publication of proportional rates by rail carriers and a lake steamship company covering through interstate transportation, the actual movement of traffic upon through bills of lading, and the prepayment of freight charges, necessitating an accounting between the carriers, is evidence of a common arrangement for a continuous carriage. Flour City S. S. Co. v. L. V. R. R. Co. 179.

COMMUNITY OF INTEREST. *See* INTERCORPORATE RELATIONS.COMMUTATION RATES. *See* TICKETS.

## COMPANY MATERIAL.

- Reparation denied where misrouting was not the cause of the damage sustained on a shipment of company material. Lathrop, Shea, Henwood Co. v. L. V. R. R. Co. 622.

## COMPARATIVE RATES.

- Addressing machines are not entitled to the same rate as stencil-cutting machines, but they are entitled to the same rate as multigraphs. *Pacific Stationery & Printing Co. v. O.-W. R. R. & N. Co.* 299 (300).
- Asparagus compared with watermelons and cantaloupes. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (564).
- Bottle-washing machines are entitled to the same rate as tub bottle-washing machines. *Western Traffic Asso. v. B. & M. R. R.* 592 (593).
- Cabbage and watermelons, compared. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (563).
- Cantaloupes compared with peaches, vegetables, and watermelons. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (563).
- Castings (iron, rough), in sacks, are entitled to fourth-class rate from Beaver Dam, Wis., to Stockton, Cal. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550.
- Coal loaded in open cars compared with coal in box or stock cars. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624.
- Cooperage compared with fire brick, sewer pipe, marble, pig iron, and iron ore. In re *Advances on Cooperage Co.* 656 (658).
- Corn compared with glucose. *Iowa v. A. C. L. R. R. Co.* 134 (137).
- Cottonseed is entitled to same rate as cottonseed oil; whether it is entitled to same rate as cottonseed meal and cake, is not decided. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 588 (591).
- Cottonseed products compared with petroleum and its products. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 327 (329).
- Durum wheat takes same rate as any other variety of wheat. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (109).
- Electrotype plate rate from Cincinnati to San Francisco found unreasonable to extent that it exceeded second-class rate. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (559).
- Excelsior in carloads is entitled to same rate as flax tow. *Keogh v. C. B. & Q. R. R. Co.* 606.
- Glucose compared with corn, molasses, and sirup. *Iowa v. A. C. L. R. R. Co.* 134 (137).
- Grain and grain products generally take the same rate. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (118).
- Grain and grain products need not necessarily take the same rate in all cases. *Iowa v. A. C. L. R. R. Co.* 134 (137).
- Hard-coal screenings rate should not be used as measure of reasonableness of rate on soft-coal screenings. *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321 (322).
- Hardwood lumber not found to be entitled to a lower rate than pine lumber. Adjustment under which both pine and hardwood take same rate, not disturbed. In re *Advances on Lumber*, 686 (697).
- Lime-sulphur solution is entitled to same rate as liquid sheep dip. *Hardie Mfg. Co. v. O. R. R. & N. Co.* 545 (546).
- Lumber and watermelons compared. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).
- Manufactured products are not necessarily entitled to the same rate as the raw material. *Iowa v. A. C. L. R. R. Co.* 134 (137).
- Manufactured products usually take a higher rate than the raw material; but there are some exceptions to this rule. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 588.

## COMPARATIVE RATES—Continued.

Multigraphs compared with addressing machines and similar machines.

Pacific Stationery & Printing Co. *v.* O.-W. R. R. & N. Co. 299 (300).

Oranges and watermelons compared. Bahrenburg, Bro. & Co. *v.* A. C. L. R. R. Co. 560 (563).

Peaches compared with watermelons and other fruits. Bahrenburg, Bro. & Co. *v.* A. C. L. R. R. Co. 560 (564).

Petroleum and its products compared with cottonseed products. Anadarko Cotton Oil Co. *v.* A. T. & S. F. Ry. Co. 327 (329).

Planotype machines are entitled to same rate as multigraphs. Pacific Stationery & Printing Co. *v.* O.-W. R. R. & N. Co. 299 (300).

Printographs are entitled to the same rate as multigraphs, but are not entitled to same rate as printing presses. Pacific Stationery & Printing Co. *v.* O.-W. R. R. & N. Co. 299 (300).

Rye flour does not ordinarily take a higher rate than wheat flour. Globe Milling Co. *v.* C. M. & St. P. Ry. Co. 594 (597).

Stencil-cutting machines and addressing machines compared. Pacific Stationery & Printing Co. *v.* O.-W. R. R. & N. Co. 299 (300).

Watermelons compared with cabbage, lumber, oranges, and peaches. Bahrenburg, Bro. & Co. *v.* A. C. L. R. R. Co. 560 (563).

Wheat and rye flour compared. Globe Milling Co. *v.* C. M. & St. P. Ry. Co. 594 (597).

Writerpress machines are entitled to same rate as multigraphs. Pacific Stationery & Printing Co. *v.* O.-W. R. R. & N. Co. 299 (300).

That a carrier has by rate adjustment as to one commodity enabled a manufacturer to overcome natural disadvantages, does not of itself justify similar action by the Commission as to another commodity. Globe Milling Co. *v.* C. M. & St. P. Ry. Co. 594 (597).

## COMPETING LINE.

Rates between same points on other lines compared. Marian Coal Co. *v.* D. L. & W. R. R. Co. 140 (145).

Refusal of carriers to open their lines to grain brought into Memphis by their competitors. Memphis Grain & Hay Asso. *v.* St. L. & S. F. R. R. Co. 609 (613).

COMPETITION. *See also* PREFERENCES AND PREJUDICES; LONG AND SHORT HAUL.

## IN GENERAL.

The matter of meeting competition is a question for the carriers, so long as no undue discrimination results. Slider *v.* S. Ry. Co. 312 (313).

Commission is not prepared to assent to contention that defendant be required to meet competition of another carrier. It is, within reasonable limits optional with a carrier whether or not it will meet competition of another carrier. Omaha Grain Exchange *v.* C. M. & St. P. Ry. Co. 122 (123).

A rate compelled by Canadian competition is not to be taken as a measure of a noncompetitive rate. Commercial Club of Superior *v.* G. N. Ry. Co. 96 (103).

A competitive rate can not be said to be voluntary and ought not to be used as a standard of comparison. Southwestern Shippers Traffic Asso. *v.* A. T. & S. F. Ry. Co. 570 (587).

Territory east of Buffalo-Pittsburgh line is apparently conceded to be largely noncompetitive, as regards the North Atlantic port differentials. Chamber of Commerce of New York *v.* N. Y. C. & H. R. R. R. Co. 55 (67).



## COMPETITION—Continued.

## FOREIGN COMPETITION.

Rates in North Dakota are affected by Canadian competition. Commercial Club of Superior *v. G. N. Ry. Co.* 96 (103).

## MARKET COMPETITION.

While market competition must always be considered and while it may alone in some cases, perhaps, justify the granting of relief under section 4, it does not justify such relief in this case. In re Rates on Salt, 192 (194). See also Kellogg Toasted Corn Flake Co. *v. M. C. R. R. Co.* 604 (606).

## POTENTIAL COMPETITION.

Bowling Green Business Men *v. L. & N. R. R. Co.* 228 (234).

## RAILROAD COMPETITION.

A carrier can not justify a lower rate to a farther-distance point on the ground of railroad competition when such road controls that competition. Bowling Green Business Men *v. L. & N. R. R. Co.* 228 (239).

Railroad competition justifies a lower rate to the middle west than to the Atlantic seaboard on watermelons from the southeast. Bahrenburg Bro. & Co. *v. A. C. L. R. R. Co.* 560 (565).

Twin-city rates are vitally affected by all-rail competition. Business Men's League of Albert Lea *v. B. & O. R. R. Co.* 125 (127).

Lumber rate to St. Louis is product of severe competition. Lumbermen's Exchange of St. Louis *v. A. & S. R. R. R. Co.* 220 (224).

Lower rates to and from Philadelphia and Baltimore than to and from New York, said to be justified by railroad competition. Chamber of Commerce of New York *v. N. Y. C. & H. R. R. R. Co.* 55 (76).

Whether railroad competition alone justifies the maintenance of a lower rate to a farther-distance point, not decided. In re Advances on Lima, 170 (172).

## WAGON COMPETITION.

Urged as justification for extending terminal rates to nontidewater points. Santa Rosa Traffic Asso. *v. S. P. Co.* 46 (47).

## WATER COMPETITION.

There is a limit beyond which rail competition with water routes may not be carried, but up to every reasonable limit the railroads have an undoubted right to compete with water lines. Commercial Club of Superior *v. G. N. Ry. Co.* 96 (107).

Common ownership of rail and lake instrumentalities of carriage places within power of rail lines the stifling of water competition; and history of lake transportation raises strong presumption that this power has not lain dormant. Flour City S. S. Co. *v. L. V. R. R. Co.* 179 (189).

Through a community of interest between rail and water carriers, water competition at an intermediate point was controlled by the rail carrier; held, that such carrier can not justify lower rates to a farther-distance point on ground of water competition. Bowling Green Business Men *v. L. & N. R. R. Co.* 228 (237).

Circumstances are dissimilar at a city served by break-bulk boats and by car ferry as compared with a city not so served. Escanaba Business Men's Asso. *v. A. A. R. R. Co.* 11.

Twin-city rates are directly and vitally affected by rail-lake-and-rail and all-rail competition. Business Men's League of Albert Lea *v. B. & O. R. R. Co.* 125 (127).

**COMPETITION—Continued.****WATER COMPETITION—Continued.**

Water competition compels low commodity rates to Pacific coast terminals. *R. R. Com. of Oregon v. S. P. Co.* 273 (275).

Absence of water competition held to produce a dissimilarity of circumstances and conditions justifying a rate adjustment alleged to be discriminatory. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.

Water competition urged as justification for extension of terminal rates to nontidewater points. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (47).

Class and commodity rates from Memphis to the Ohio River are largely influenced by water competition. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (83).

Water transportation between the Atlantic seaboard and Galveston, Tex., has never been open to free competition. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (579).

**COMPETITIVE RATE.**

A competitive rate can not be said to be voluntary and ought not to be used as a standard of comparison. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (587).

It is a well-established and generally recognized rule that if additional business can be taken on at rates which will contribute little in addition to actual out-of-pocket expense, the carrier will be advantaged to that extent and all its patrons will be benefited to the extent to which such traffic contributed to the net revenue. *Boileau v. P. & L. E. R. R. Co.* 129 (132).

**COMPLAINT. See also ISSUE: LIMITATION OF ACTIONS.**

Omnibus complaint. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (19).

**COMPLIANCE.**

Action for punishment and prevention of violations of act as regards transit privileges will be taken by Commission. Transit case, 340 (348).

To avoid prosecutions for illegal overcharges, double collections must cease. In re Express Rates, 380.

**CONCERTED ACTION. See also INTERCORPORATE RELATIONS.**

Concerted action among carriers in filing discriminatory rates. *Pittsburgh Vein Operators' Asso. of Ohio v. P. Co.* 280 (281).

**CONFERENCE RULINGS. See ADMINISTRATIVE RULINGS.****CONFLICTING RATES. See LEGAL RATES.****CONNECTING CARRIERS. See CARRIERS.****CONSIGNOR AND CONSIGNEE. See PARTIES.****CONSOLIDATED SHIPMENTS. See also TRANSIT PRIVILEGES.**

The right to make a consolidated shipment is given by law to every shipper, the rate to be applied being that fixed for the large package; provided, that when a consolidated express shipment averages less than 10 pounds per package charges may be assessed on the basis of 10 pounds per package. In re Express Rates, 380 (407).

A rule that express packages containing articles of more than one class shall be charged at rate applicable to highest-rated article, unless otherwise provided, not found unreasonable. *Id.* 380 (412).

**CONSTITUTIONAL LAW.**

Constitutional provision against giving a preference to the ports of one state over those of another, discussed. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (60).

## CONSTRUCTIVE MILEAGE.

It is impossible to determine exactly the number of water miles that should be taken as equivalent to one rail mile. Everything depends on the length of the haul by water and much depends on the character of the rail mileage. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (583).

Total distance from New York to Galveston by water is slightly less than 2,200 miles, and Commission assumes that this distance, as compared with a rail haul from Galveston to Wichita or Denver, would be fairly equivalent to 350 rail miles. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (583).

## CONSUMERS.

The consumers' interests must be considered. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).

## CONTINUOUS CARRIAGE.

Under section 7 and the test of state traffic laid down by the Supreme Court interstate transportation of oil by pipe lines is not divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipe lines of that corporation. *In re Pipe Lines*, 1 (7).

A movement in fact interstate may by intervening possession be converted into two local movements. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (585).

## CONTRACTS.

## IN GENERAL.

Contracts between railroads and express companies analyzed and discussed. *In re Express Rates*, 380 (319, 423, 436, 455).

## JURISDICTION.

Commission has no jurisdiction to enforce contracts in any proceeding. *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (644).

## EVIDENCE.

Contract held admissible as evidence of what would be a proper division. *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (644).

## COST OF OPERATIONS,

Severe operating conditions caused by grades and curves are to be considered in determining the reasonableness of a rate. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215). See also *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672).

The question of increased cost of operations goes more to the reasonableness of a rate than to the form of discrimination herein presented. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (48).

Whatever defects inhere in the process of analyzing operating expenses do not negative the guiding value of the statistical results arrived at. *Pittsburgh Vein Operators Asso. of Ohio v. P. Co.* 280 (285).

Increased cost of operations, discussed. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (227).

Operating expenses can not be used as an absolute test of the reasonableness of express rates. *In re Express Rates*, 380 (423).

## COST OF SERVICE.

Cost of service is but one of the elements to be considered in determining the reasonableness of a rate. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).



## COST OF SERVICE—Continued.

Cost figures are valuable in determining the question of reasonableness.

Pittsburgh Vein Operators Asso. of Ohio *v. P. Co.* 280 (285).

Cost of service is a factor in refrigeration that seems to vary with the location of the shipping points and the source and cost of ice. *In re Advance on Fruits and Vegetables*, 164 (166).

Where the cost of handling coal was offered in justification of existing rates, held that it is not shown that it costs more to handle coal than other freight traffic. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (143).

A carrier may not carry the traffic of one city at less than the cost of service and so unduly burden other traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

## "CRATED."

Defined. *Alexander v. S. P. Co.* 306 (307).

CREDITS. *See* DEMURRAGE; PAYMENT.

CRIMINAL PROSECUTIONS. *See* COMPLIANCE.

## CROSS-COUNTRY CHECKING.

*Commercial Club of Superior v. G. N. Ry. Co.* 96 (111).

## CUMBERLAND RIVER.

*Bowling Green Business Men v. L. & N. R. R. Co.* 228 (233).

## CUT-OFF LINE.

*Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (142).

DAMAGES. *See also* LIMITATION OF ACTIONS; CLAIMS.

## IN GENERAL.

Awards of reparation by the Commission are based upon violations of the act in the past, not for present violations thereof. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (370).

## JURISDICTION OF COMMISSION.

Commission has no power to direct payment of damage claims since a failure to pay is not a violation of the act. *Larkin Co. v. E. & W. T. Co.* 645 (646).

Reasonable rule for adjustment of claims against express companies, indicated by Commission. *In re Express Rates*, 380 (396, 412).

Commission may award damages for collection of rate in excess of legal rate without fixing a rate for the future. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (370); *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

## POLICY OF COMMISSION.

Damages will not be awarded where to do so would be to sanction a privilege conditioned upon the use to which a commodity is put. *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.* 602.

No damages are to be awarded on past shipments in consequence of any readjustments resulting from decision in this case. *Southwestern Millers League v. A. T. & S. F. Ry. Co.* 552 (557).

In view of the fact that the existing adjustment has obtained for many years and apparently was in effect when complainant began operations, damages denied notwithstanding the fact that the rate adjustment is found to be unduly prejudicial to complainant. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88).

Where a carrier is willing to award reparation on the basis of an out-of-line rate, which rate defendant is unwilling to maintain in the future, damages are denied. *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321 (322).

Damages will not be awarded on the basis of a retroactive application of a transit privilege. *Rosenbaum Bros. v. B. & O. R. R. Co.* 287.

**DAMAGES—Continued.**

The Commission frequently declines to award reparation although a rate or charge is found to be in violation of the act, where the Commission does not believe it to be a proper case for reparation. See *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (606); *New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167 (169); *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88); *R. R. Com. of Oregon v. S. P. Co.* 273 (279); *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (379); *Mfrs. & Merchants Asso. v. A. & A. R. R. Co.* 331 (339).

Damages denied where reparation was not one of the issues raised; and objection of defendants to enlargement of the issue for the benefit of interveners who sought reparation, sustained. *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

**PARTIES.**

A railroad commission is not entitled to damages as it suffers no damage. *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

A consignee who has paid charges based on an unreasonable rate is not entitled to reparation where such charges have been deducted from the shipper's invoice. *Deming Lumber Co. v. S. P. Co.* 598 (599).

Where a commission merchant who pays the freight in the first instance has settled with his principal, who, by the terms of that settlement, has paid the freight charges, such commission merchant is not a proper party to maintain a proceeding for reparation. But it must appear that the account has been closed; that the freight has been paid in fact by the principal; and that the interest of the commission merchant has been extinguished. *Crutchfield & Woolfolk v. S. P. Co.* 679 (680).

Commission merchants who were under obligation to pay freight charges are upon the face of the transaction the only proper parties who can maintain suit for an overcharge or an excessive rate. Damages awarded. *Crutchfield & Woolfolk v. S. P. Co.* 679 (680).

**GROUND FOR AWARD.****AMBIGUOUS TARIFF.**

Damages awarded for unreasonable charges resulting from ambiguous tariff provision. *Alexander v. S. P. Co.* 306.

**DISCRIMINATION.**

Damages to be awarded because of discrimination in failure to absorb switching charges. *Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205 (208).

**LONG AND SHORT HAUL.**

Damages denied though rates found to be in violation of section 4. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (606).

**MISROUTING.**

While carriers are liable for damage due to disregarding routing instructions, damages will not be awarded where the misrouting complained of is not the cause of the damage. *Lathrop, Shea, Henwood Co. v. L. V. R. R. Co.* 622.

**OVERCHARGE.**

Damages awarded for overcharge. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (369).

Damages for overcharge to be awarded upon proper proof. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (158).

**PREFERENCES AND PREJUDICES.**

Damages to be awarded. *Davis v. St. L. I. M. & S. Ry. Co.* 309 (311); *Johnson & Son v. C. & O. Ry. Co.* 698.

## DAMAGES—Continued.

## PREFERENCES AND PREJUDICES—Continued.

Damages denied though rate held discriminatory. *New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167 (169); *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88).

## UNREASONABLE CHARGES.

Damages awarded for unreasonable refrigeration charges. *Jackson & Perkins v. S. P. Co.* 323.

Ambiguity in tariff in regard to packing resulted in unreasonable charges. Reparation awarded. *Alexander v. S. P. Co.* 306.

Rule under which complainant was compelled to pay the full minimum charge on an article shipped to take the place of an article which was lost in transit through carrier's negligence, held unlawful and damages awarded to extent of additional charges. *Larkin Co. v. E. & W. T. Co.* 645.

Reparation awarded for unreasonable re-icing charges. *Crutchfield & Woolfolk v. S. P. Co.* 651.

Minimum weight found unreasonable and reparation awarded for unreasonable charges resulting therefrom. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

## UNREASONABLE RATES.

Rates found unreasonable and damages awarded. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648; *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557; *Western Traffic Asso. v. B. & M. R. R.* 592; *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550; *Loeb v. T. & P. Ry. Co.* 304; *Riverside Mills v. St. L. & S. F. R. R. Co.* 264; *Pacific Stationery & Printing Co. v. O.-W. R. R. & N. Co.* 299; *Davis v. St. L. I. M. & S. Ry. Co.* 309 (311).

Rates found unreasonable; damages to be awarded. *Keogh v. C. B. & Q. R. R. Co.* 606 (608); *National Refining Co. v. M. P. Ry. Co.* 315 (317); *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (673); *Marian Coal Co. v. D. L. & W. R. R. Co.* 140; *Bascom-Porter Co. v. A. T. & S. F. Ry. Co.* 297 (298); *Davis v. St. L. I. M. & S. Ry. Co.* 309 (311); *Sioux City Commercial Club v. A. & S. R. R. Co.* 177 (179); *Dierks & Son Lumber Co. v. M. P. Ry. Co.* 205 (208); *Hardie Mfg. Co. v. O. R. R. & N. Co.* 454 (456).

Rates found unreasonable, but reparation denied. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (379); *New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167 (169); *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

## MEASURE OF DAMAGES.

In awarding damages the Commission does not undertake to offset underpayments and overpayments. *Crutchfield & Woolfolk v. S. P. Co.* 651 (655).

That a shipper in some instances in the past has paid less than a reasonable charge is no reason why he should not be awarded reparation in instances where unreasonable charges have been exacted from him. *Crutchfield & Woolfolk v. S. P. Co.* 651 (655).

## EVIDENCE.

Evidence insufficient to authorize award of damages, though rate found unreasonable. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (379).



**DAMAGES—Continued.****EVIDENCE—Continued.**

The willingness of a defendant to award reparation on the basis of an out-of-line rate which defendant is not willing to maintain in the future is not an admission that the rate charged was unreasonable. *Chaffin Coal Co. v. C. M. & St. P. Ry Co.* 321 (322).

**DEBATES.**

Congressional debates considered in construing act. In *re* Pipe Lines, 1 (4).

**DECIMAL SYSTEM.** See **CLASSIFICATION.****DEDUCTIONS IN WEIGHT.** See **WEIGHT; TRANSIT PRIVILEGES.****DEFECTIVE TARIFF.** See **TARIFFS.****DELIVERY.** See also **SWITCHING; WHARVES AND WHARFAGE; TERMINAL FACILITIES.**

Under no circumstances should delivery be withheld from a consignee of a package bearing either one or both of the prepaid labels. In *re* Express Rates, 380 (406).

There should be definite rules concerning the delivery of express traffic, and when free delivery is made the free-delivery limits must be plainly indicated. This information should be contained in the express tariffs and express directory. In *re* Express Rates, 380 (394, 406).

Merchants of Washington, D. C., located on Fourteenth street, northwest, between Florida avenue and Park road, are subjected to undue prejudice by being compelled to pay a drayage charge on less-than-carload freight shipments, while merchants located in Georgetown are given free pick-up and delivery service. *Casassa v. P. R. R. Co.* 629.

Carrier not required to resume delivery of melons at pier in New York, conditions justifying change of delivery from New York City to Jersey City. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 561 (568).

**DEMURRAGE.****TARIFF AUTHORITY.**

Penalties for delay can not be imposed without tariff authority. *Crutchfield & Woolfolk v. S. P. Co.* 651 (655).

**UNIFORM DEMURRAGE CODE.**

The uniform demurrage code was not prepared by the carriers, but by a committee of the National Association of Railway Commissioners; it was approved, but not prescribed, by the Commission. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27.

**RULES.****AVERAGE RULE.**

Provision of uniform demurrage code, separating cars under the average agreement into two classes: (a) box cars, including refrigerator cars; and (b) freight cars of all other descriptions; attacked as unreasonable. Objectionable feature canceled by carrier and complaint dismissed. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (31).

**BUNCHING.**

Commission declines to condemn the absence from uniform demurrage code of provision against demurrage in case of bunching. *Id.* 27 (32).

**INDUSTRIAL SWITCHING.**

Commission is not prepared to direct additional time allowance to industrial plants. *Id.* 27 (30).

## DEMURRAGE—Continued.

## RULES—Continued.

## NOTICE.

Complainant found to have been given due notice of arrival, a receipt acknowledging notice having been signed during his absence by persons who had made previous acknowledgments for him. *Alexander v. St. L. & S. F. R. R. Co.* 253.

Defendants should give complainant industrial plant notice of arrival of cars, stating point of shipment, car initials and number, and contents, and, under the average plan, free time on such cars should run from the first 7 a. m. after such notice is mailed or is given verbally or by telephone, or from the first 7 a. m. after the car is placed upon the interchange track, if such placement is later than the giving of notice. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (30).

## WEATHER INTERFERENCE.

Commission declines to condemn the absence of weather interference provision from uniform demurrage code. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (32).

## DENSITY OF TRAFFIC.

Fact that traffic from a town moves in trainloads is a circumstance to be considered. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215).

DEPOTS. *See* STATIONS; DELIVERY; TERMINAL FACILITIES; SWITCHING.

## DESCRIPTION OF PACKAGES.

Practice under which a lower rate is granted in case an express package is described in a certain way, discussed. *In re Express Rates*, 380 (400).

DESTINATION. *See also* ORIGIN; PROPORTIONAL RATES.

Rail carriers may take into consideration the previous or further haul of export and import traffic and may reasonably differentiate it from domestic traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (74).

## DIFFERENTIALS.

Reasonable differentials on import and export traffic at North Atlantic ports prescribed by the Commission. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55; 674; *In re Import Rates*, 78; 678.

Differential rate adjustment considered. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244 (246); *Johnson & Son v. C. & O. Ry. Co.* 698 (699); *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321 (322); *Slider v. S. Ry. Co.* 312 (313); *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (587); *In re Advances on Barley*, 664 (668); *National Refining Co. v. M. P. Ry. Co.* 315; *Pittsburgh Vein Operators of Ohio v. P. Co.* 280 (282); *In re Advances on Sand and Gravel*, 249 (250); *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213; *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125; *Commercial Club of Superior v. G. N. Ry. Co.* 96; *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50; *Boileau v. P. & L. E. R. R. Co.* 129 (130); *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (242).

## DIRECTORY.

Express directory required to be published. *In re Express Rates*, 380 (395).

DISADVANTAGES. *See* ADVANTAGES; PREFERENCES AND PREJUDICES; DISCRIMINATION; LONG AND SHORT HAUL.DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES.

Failure to include interstate shipments of ice within operation of reciprocal switching arrangement at Chicago, Ill., found to be unjustly discriminatory. *In re Advances on Ice*, 660.

## DISCRIMINATION—Continued.

Requirement that shipper shall pay for amount of ice consumed in reicing held unduly discriminatory. *Crutchfield & Woolfolk v. S. P. Co.* 651 (653).

Rate on coke to Carondelet not found in violation of section 2 as compared with rate to Chicago, where a lower rate obtains on coke for use in blast furnaces. *St. Louis Blast Furnace Co. v. Ry. Co.* 360.

Acceptance by a railroad company of a given division only on traffic transported via railroad-owned lake lines does not constitute the discrimination against connecting lines prohibited by section 3. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (189).

DISTANCE. *See also* CONSTRUCTIVE MILEAGE.

Distance is not controlling. If it were, there could be no group rates. *McCloud River Lumber Co. v. S. P. Co.* 89 (95).

Distance is controlling in this case wherein transportation conditions are substantially similar. *Commercial Club of Superior v. G. N. Ry. Co.* 96.

Distance alone is not controlling in determining the North Atlantic port differential question. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (71).

Average haul is an important fact in determining reasonableness of a rate. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (223).

If distance alone were the measure of relationship of rates, each market would control practically the entire grain within a given radius of that market. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (110).

So long as rates are made under the group system the distance theory must be modified. *Johnson & Son v. C. & O. Ry. Co.* 698 (701).

The future may compel greater recognition of distance in the making of rates, but the present business structure was not developed on that principle; and if a change is to be made, such change perforce must be a gradual one. *Boileau v. P. & L. E. R. R. Co.* 129 (132).

Disadvantage of distance can not be ignored. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215).

A city is entitled to advantages arising out of its shorter distance to a given destination. *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122 (123).

Carriers are not required to disregard differences in distance. *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

Differences in distance of much more than 264 miles are frequently disregarded under the blanket plan of making transcontinental rates. In re *Advances on Barley*, 664 (667).

Distance is largely disregarded in so far as the North Atlantic port differential adjustment is observed. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (66).

Distances in the order herein are to be measured by the short line of the originating system, the North Western and Omaha roads being considered as one system and the Milwaukee road as having its own rails to Duluth. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (120).

Commission is not prepared to accede to contention that herein differences in inbound rail distances of not more than 125 miles should be disregarded. Carriers might voluntarily disregard such distances if by doing so they did not cause unjust discrimination, but in this case they may not properly be required to do so. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (116).



**DISTANCE—Continued.**

The average distance which an express package of any size is hauled is about 200 miles. In re Express Rates, 380 (429).

Average distance discussed. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (223); *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (581).

**DISTURBANCE OF ADJUSTMENT.**

Much weight is always given to rate adjustments of long standing to which commercial conditions have adjusted themselves. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (74).

Commission is not justified in setting aside the plain requirement of Congress because some tariff readjustment might be required. In re Rates on Salt, 192 (195).

Relief can not be denied merely because other persons or localities might be induced to seek like relief. *Casassa v. P. R. R. Co.* 629 (631).

Commission declines to award reparation on the basis of an out-of-line rate. *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321 (322).

Where to reduce a given rate means a widespread reduction of other rates, the Commission proceeds with caution, but if a given rate is unreasonable, Commission's duty is to reduce that rate, irrespective of consequences to other routes or markets. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (575).

**DIVERSION. See RECONSIGNMENT.****DIVISION OF THROUGH RATES.****IN GENERAL.**

How a joint through rate shall be divided is a matter of agreement and bargain between the carriers. In re Advances on Barley, 664 (667).

Shippers have no interest in the division of a rate. In re Advances on Coal, 43 (44); *Mrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (332).

**PARTIES ENTITLED.**

Whether the industrial line herein involved is entitled to divisions or allowances is not decided. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (157).

Industrial lines controlled financially by same persons who control the industries which furnish the bulk of their tonnage held to be common carrier and entitled to divisions. *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (643); *McCloud River Lumber Co. v. S. P. Co.* 89 (94).

**REASONABLENESS.**

Rail carrier's division of joint through rail-and-water rate may well be lower than its just local charges. If steamships are content to take materially less than at present for their division, that is a substantial reason for reducing the total through charge. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (580).

On rail-and-water haul from New York via Galveston to Wichita, the rail carrier with a rail mileage of 700 miles would be entitled to two-thirds of the net amount for division, while the water carrier with a water mileage of slightly less than 2,200 miles would be entitled to one-third. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (583).

The division received by a railroad on traffic reaching it by a railroad-owned lake line is not an absolute measure of the reasonableness of a division that should accrue on traffic reaching it by steamers in which it has no interest. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (189).

## DIVISION OF THROUGH RATES—Continued.

## FIXING DIVISIONS.

While no joint rate is established by Commission at this time, Commission indicates what would be a reasonable maximum division for certain carriers. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (190).

Order fixing divisions will be made unless carriers agree upon divisions. *McCloud River Lumber Co. v. S. P. Co.* 89 (95); *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (87).

Maximum division to which industrial road is entitled to, prescribed by Commission. *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639.

## MEASURE OF RATE.

Commission does not accept a comparison of divisions as proving unreasonableness of a rate. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125 (128).

Rail carrier's division of joint rail-and-water rate may be less than its local rate. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (582).

DOCKS. *See* WHARVES AND WHARFAGE.

## DOUBLE-DECK CARS.

Evidence respecting request for double-deck car rate on hogs from Bowling Green to Chicago is not sufficient to enable Commission to reach a conclusion. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (243).

DRAYAGE. *See* DELIVERY; SWITCHING.

DUAL RATES. *See* USE.

ECONOMIC CONDITIONS. *See* COMMERCIAL AND ECONOMIC CONDITIONS.

## EILGUT RATE.

In re Express Rates, 380 (424).

ELECTRIC LINES. *See* STREET RAILROADS.

## ELEVATION.

## IN GENERAL.

Commercial and transportation elevation, distinguished. In re Elevation Allowances, 197 (199).

## ALLOWANCES.

While Commission believes that payment of all elevation allowances and giving of all free elevation should be prohibited, it fully accepts Supreme Court decision holding that elevation allowances may be made. In re Elevation Allowances, 197 (204).

Whatever rule concerning elevation allowances is established, it ought to be one of universal application: In re Elevation Allowances, 197 (200).

One-fourth of one cent per bushel is fair compensation for transportation elevation, but for both transportation and commercial elevation a fair compensation would be not less than three-fourths of one cent per 100 pounds. Scale of charges for commercial elevation recommended and Commission is of opinion that transportation elevation can be brought within 10-day limit. In re Elevation Allowances, 197.

Where railroad elevators exist, Commission must not only prohibit payment by railroad to private elevator of more than one-fourth of one cent per bushel, but must prohibit railroad from rendering for shipper at its own elevator, free, any service beyond transportation elevation proper. Commission must also determine what is a just charge for these commercial operations and insist that the railroad elevator, if it performs the operations, shall charge not less than the sums found reasonable. In re Elevation Allowances, 197 (203).

**ELEVATION—Continued.****ALLOWANCES—Continued.**

The propriety of paying an elevator allowance to a shipper who has use of a railroad-owned elevator at a nominal rental, discussed. *Rosenbaum Bros. v. B. & O. R. R. Co.* 287 (288).

**CHARGES.**

Section 1 imposes on the carrier the duty to provide and furnish elevation and handling of property transported at reasonable charges. *Transit case*, 340 (343).

**EMBARGO.**

Placing of embargo against cars being sent off carrier's own line, held unlawful. *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 618.

**EMINENT DOMAIN.**

That a pipe line does not exercise the right of eminent domain, does not take it out of the common-carrier class. *In re Pipe Lines*, 1 (9).

**EMPTY CARS.**

Empty car movement, considered. *In re Fourth Section Application Docket* 1243, 34 (35).

Commission upholds a practice under which coal when loaded in stock or box cars is given a lower rate than when loaded in open cars, the purpose being to induce the movement of stock and box cars southward that they may be loaded for the return trip with freight requiring cars of that character. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624 (625).

**EQUALIZING CONDITIONS. See ADVANTAGES; COMMERCIAL AND ECONOMIC CONDITIONS; PREFERENCES AND PREJUDICES.****ESTOPPEL. See also RES ADJUDICATA; PRECEDENTS.**

A shipper is not estopped from complaining of a rate adjustment because he made no complaint in the past. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (569).

Where, through a community of interest between water and rail carriers, a city is deprived of benefits of water competition, the rail carrier is estopped from justifying a discrimination against such city on ground that water competition compels lower rates at farther-distance points. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (237).

Where the Commission is considering rates of numerous carriers that have short lines or no lines whatever in North Dakota, such carriers are not concluded by testimony of other carriers in a court case. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (110).

**EVIDENCE. See also ESTOPPEL; ADMISSION; BURDEN OF PROOF.**

In the absence of evidence, no finding is made. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (100); *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (243).

Evidence held insufficient to prove unreasonableness of rate. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (60); 674; *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122 (124); *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11; *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372.

Where the unreasonableness per se of a rate is not in issue, testimony in reference to unreasonableness per se is not relevant. *In re Advances on Lumber*, 686 (696).

**EX-LAKE SHIPMENTS. See RAIL-AND-WATER RATES.**



## EXPORT AND IMPORT RATES.

## JURISDICTION.

While the Commission has no jurisdiction of ocean rates and must deal with the port differential question as though the ports were destinations instead of gateways, the rates to and from the ports must be reasonable, must be published as independent from the ocean transportation, and are subject to all provisions of the act. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74); 674.

## RELATION TO DOMESTIC RATES.

Rail carriers may take into consideration the previous or farther haul of export and import traffic, and may differentiate it, reasonably, from domestic traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74); 674.

## EXPORT RATES.

Differentials under New York on all-rail and lake-and-rail export shipments from differential territory to Baltimore should not exceed 3 cents per 100 pounds, and to Philadelphia 2 cents, on classes and commodities other than grain; on grain the differential under New York should not exceed 1.5 cents to Baltimore and 1 cent to Philadelphia. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55; 674.

As to all of this traffic the export rates to Boston should not be lower than to New York. *Id.*

The differentials under New York from Buffalo, Erie, and West Fairport to Baltimore and Philadelphia on ex-lake grain from differential territory for export should not exceed two-tenths of 1 cent per bushel on barley and oats and three-tenths of 1 cent on wheat, corn, and rye. *Id.*

Export rates on glucose from Chicago to New York held excessive and discriminatory. *Iowa v. A. C. L. R. R. Co.* 134.

## IMPORT RATES.

Differentials under New York on import traffic, all-rail and lake-and-rail, from Philadelphia and Baltimore to differential territory should be no greater than those which existed in the latter part of the year of 1908. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55, 674.

Import rates from Boston should not be lower than from New York. *Id.* 55; explained and modified. *Id.* 674.

Philadelphia and Baltimore allowed certain differentials under New York on import traffic, but import rates from Boston should be the same as from New York. *In re Import Rates*, 78; explained and modified, *Id.* 678.

## EXPRESS COMPANIES.

## IN GENERAL.

Express companies are peculiarly an American institution. They live by the grace of the railroads and their existence can be justified only to the extent that their service is more efficient and more reasonable than that which would be given by the railroads themselves. *In re Express Rates*, 380 (384).

Express companies are agencies of the railroad for doing a small-parcel business. They may properly be treated as freight forwarders by passenger train, giving supplemental service and intermediate care. *Id.* 380 (418, 431).

Express companies are subject to the act. *Id.* 380 (387).

No real competition exists between the express companies. *Id.* 380 (463).

## EXPRESS COMPANIES—Continued.

## IN GENERAL—Continued.

Approximately one-half of the express business consists of packages under 20 pounds in weight; the average shipment is 34 pounds. Id. 380 (428).

New fields of activity are open to the express companies in the matter of service. Id. 380 (432).

## RATES.

## IN GENERAL.

Express rates should be made primarily to meet the need of the great body of people and should be stated in terms that represent the small packages rather than by the 100 pounds. In re Express Rates, 380 (431).

Express rates should include a return to the express company which will compensate it with profit for the expense of the service, there being added thereto the proper charges which it may reasonably make for the service the railroad gives. Id. 380 (431).

In fixing rates an express company should not be allowed to charge more than a railroad company for the same service. Id. 380 (431).

Express rates can not have any fixed relation to freight rates. Id. 380 (426).

It is unreasonable to fix as rapid a decline in express rates for long distances as is made in freight rates; in this respect express service is more analogous to passenger than freight service. Id. 380 (431).

There should be a higher return to the railroad company for the carriage of express matter than it receives upon freight traffic. Id. 380 (424).

Freight, when moved on a passenger train, should not pay the same charge as imposed on a passenger. There is no relationship between the carriage of dead freight and the carriage of a passenger. Value of service, risk, care given, and cost of terminals and stations widely differ. Id. 380 (426).

In compounding the express rate the railroad should be allowed a compensation for bulked freight moved upon a passenger train, as to which it is relieved by contract for all liability for loss or damage and is without expense for the furnishing of a receipt, the billing, the bookkeeping, and a great number of expenses. Id. 380 (431).

## RATE SYSTEMS.

Blanket or zone system, discussed. In re Express Rates, 380 (429).

Block system of express rates prescribed by Commission. Id. 380 (413).

Flat system would doubtless stimulate traffic, but Commission can not order such an experiment to be made. Id. 380 (430).

Scale of graduated rates held unreasonable, discriminatory, and arbitrary. Id. 380 (407, 427).

## PARCEL RATES.

A burden that is excessive and unjustifiable has rested upon the packages of smaller weight which the express company was especially created to transport. The railroad in farming out this branch of its service upon a percentage basis has created an inevitable tendency to increase parcel rates. Id. 380 (433).

## MEASURE OR BASIS OF RATES.

Factors considered by the Commission in prescribing express rates. In re Express Rates, 380 (383).

**EXPRESS COMPANIES—Continued.****RATES—Continued.****MEASURE OF BASIS OR RATES—Continued.**

A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying a small package upon a passenger train or train going at passenger speed, plus a reasonable compensation for the service of gathering, care, and delivering which the express company as such renders. *Id.* 380 (424).

The express rate should not include more than a reasonable compensation for the service given. *Id.* 380 (431).

The value of the property owned and used by express companies can not be used as a basis for fixing rates. *Id.* 380 (418).

Operating expenses can not be used as an absolute basis. *Id.* 380 (423).

The earnings of express companies can not be made the basis of rates, for this is a matter which the Commission can not control. *Id.* 380 (423).

Express rates may not be based upon the monopoly right to be the exclusive forwarder over one or more railroads. *Id.* 380 (431).

**CLASSIFICATION.**

There must be a new classification of express rates in which the standard or first-class rate shall be that on merchandise and to which there shall be but one great class of exceptions, or second class, consisting of articles of food and drink now carried under the term of "general specials." The rate on the latter class should be a certain percentage of the merchandise rate, and 75 per cent of the merchandise rate would yield a fair rate. Other rates may be made to meet traffic needs and develop industries, but all such rates should be based on conditions of service and should likewise be stated in percentages of the merchandise rate. *In re Express Rates*, 380.

**THROUGH ROUTES AND RATES.**

The express companies must unite in direct through routes, reaching all cities and towns accessible to each other by the shortest route measured in time. The Commission will leave this matter in the hands of the carriers, but will undertake to see that this principle is recognized in routing express traffic. *In re Express Rates*, 380.

In arranging the divisions among the connecting carriers due consideration should be given by the connecting carrier to the surrender by the originating carrier of its right to retain possession of the shipment for the longest possible haul over its own lines, and the division should be agreed upon which will compensate the originating carrier for its sacrifice. *Id.* 380 (411).

**LEGAL RATES.**

There can be but one legal express rate between two points, and a carrier can not distinguish in rates between those who pay in advance and those who do not. *In re Express Rates*, 380 (399).

**RULES, REGULATIONS, AND PRACTICES.****IN GENERAL.**

The rules of the express companies are too many and too involved. They need even more drastic revision than is herein suggested. *In re Express Rates*, 380.

**CARLOAD AND BULKY SHIPMENTS.**

Rule governing carload and bulky shipments modified and reasonable rule prescribed by Commission. *In re Express Rates*, 380 (410).



**EXPRESS COMPANIES—Continued.****RULES, REGULATIONS, AND PRACTICES—Continued.****CLAIMS.**

In the event of a claim made in writing the company should immediately acknowledge its receipt and should, within six months from the date of filing such claim, notify the claimant in writing of the disposition to be made thereof. This rule applies to claims for either whole or partial loss or destruction of a shipment. In re Express Rates, 380 (396).

Claims for c. o. d. collections should be promptly paid on presentation of proper proof of delivery and failure to make return. In re Express Rates, 380 (412).

**CLASS AND COMMODITY RATES.**

A rule providing that the publication of a commodity rate removes the application of the classification rate, not found unreasonable. In re Express Rates, 380 (412).

**C. O. D. SHIPMENTS.**

The express company is entitled to some compensation for acting as collection agent. In re Express Rates, 380 (409).

Returns from collections should be made within 24 hours. Id. 380 (409).

Where a delivered express package has not been prepaid, the carrier must look in the first instance to the consignee for payment. Id. 380 (391).

In event of failure or neglect of forwarding agent to assess proper charges in first instance, the express company should first look to the consignor. Id. 380 (406).

**CONSOLIDATED SHIPMENTS.**

The right to make a consolidated shipment is given by the law to every shipper, the rate to be applied being that fixed for the large package; provided that when a consolidated express shipment averages less than 10 pounds per package, charges may be assessed on the basis of 10 pounds per package. In re Express Rates, 380 (407).

A rule that express packages containing articles of more than one class shall be charged at the rate applicable to the highest rated article, unless otherwise provided, not found unreasonable. Id. 380 (412).

**DELIVERY.**

There should be definite rules concerning delivery of express traffic, and when free delivery is made, the free delivery limits must be plainly indicated. This information should be contained in the express tariffs and in the express directory. In re Express Rates, 380 (394, 406).

Under no consideration should delivery be withheld from a consignee of a package bearing either one or both of the prescribed prepaid labels. Id. 380 (406).

**DESCRIPTION OF PACKAGES.**

Practice under which a lower rate is granted when a shipment is described in a certain manner, discussed. In re Express Rates, 380 (400).

**INSURANCE.**

Charges of express companies based upon a valuation in excess of \$50 should not exceed 10 cents for each additional \$100 or fraction thereof in excess of \$50. In re Express Rates, 380 (397).

**LABELS.**

To avoid prosecutions for illegal overcharges it is essential that double collections shall cease, and to this end a system of labels is herein prescribed—a yellow label, which shows that the charges have been paid; a white label, when the charges have not been paid; and if no label is carried on a package, such package must be delivered without charge and the error later corrected. In re Express Rates, 380.

**EXPRESS COMPANIES—Continued.****RULES, REGULATIONS, AND PRACTICES—Continued.****LIABILITY AND LIMITATION OF LIABILITY.**

The validity of the provision in express receipts limiting liability to \$50 per shipment is now before the United States Supreme Court for final determination. For the present, the Commission will permit the \$50-valuation clause to remain in the receipt. This liability, with respect to shipments in excess of 100 pounds, should be increased in ratio to the increase in weight. In re Express Rates, 380 (495).

Rule, under which examination and partial delivery is permitted only when consignor has executed a contract releasing the express company from all loss, not found unreasonable. Id. 380 (410).

The declared valuation of an express package, or a declaration that the valuation has not been given, should be written into the express receipt; the use of a rubber stamp for this purpose, prohibited. Id. 380 (404).

**MARKING PACKAGES.**

Packages containing fragile articles consisting wholly or in part of, or contained in, glass, must be plainly marked to indicate contents. In re Express Rates, 380 (405).

Practice of according a lower rate when an express package is marked "value not exceeding \$10," discussed. Id. 380 (399).

Shippers who refuse to furnish a return address should be required, by proper rule, to prepay charges. Id. 380 (404).

The use of rubber stamps to indicate that the value of an express package has not been declared, prohibited. Id. 380 (404).

**NOTICE.**

In the event of nondelivery arising from the loss or destruction of a shipment, the express company should immediately give notice to both consignor and consignee; and where the consignee declines to accept a shipment, the agent at destination should immediately mail a written notice of such refusal to the consignor. In re Express Rates, 380 (406).

Where a claim is made in writing the express company should immediately acknowledge its receipt and should, within six months from the date of filing such claim, notify the claimant in writing of the disposition to be made thereof. Id. 380 (396).

**OVERCHARGES.**

The practice of double collections must cease, and to avoid prosecutions therefor a system of labels is herein prescribed by the Commission. In re Express Rates, 380.

A refund of overcharges should be made within 24 hours where an over-collection has been made. Id. 380 (392).

**PACKING.**

Express rules should require safe packing. In re Express Rates, 380 (405).

Packages containing fragile articles or contained in glass must be plainly marked to indicate contents. Id. 380 (405).

Rule 14, prescribing certain forms for express packages, and rules 19 to 24, inclusive, dealing with methods of packing, require no change. Id. 380 (410, 412).

**PAYMENT.**

A carrier has the right to demand prepayment on all shipments, but it can within reasonable and nondiscriminatory limits waive its right to prepayment and extend credit. It can not, however, distinguish in rates between those who prepay and those who do not. In re Express Rates, 380 (399).



**EXPRESS COMPANIES—Continued.****RULES, REGULATIONS, AND PRACTICES—Continued.****PAYMENT—Continued.**

Prepayment should be required, by proper rules, of shippers who decline to furnish a return address. Id. 380 (404).

Where a delivered express package has not been prepaid the carrier must look in the first instance to the consignee for payment. Id. 380 (391).

In the event of failure or neglect on the part of a forwarding agent to assess the proper charges in the first instance the carrier should look first to the consignor. Id. 380 (406).

**REBATES.**

The practice of giving rebates which are concealed by indirection in the express tariffs must cease. In re Express Rates, 380.

**RECEIPTS.**

Carriers must, under the law, give a receipt for the packages they receive. In re Express Rates, 380 (395).

Unreasonable conditions and limitations in express receipts, discussed. Id. 380 (395).

Rule 13, covering the procurement and return to consignor of consignee's receipt for packages delivered and providing for a charge of 10 cents for this service, not found unreasonable. Id. 380 (410).

**RECONSIGNMENT AND DIVERSION.**

Rules 26 and 27, relating to change of destination in transit and re-consignments, not found unreasonable. In re Express Rates, 380 (412).

**REFUNDS. See also OVERCHARGES.**

After delivery of a shipment and collection of charges thereon a refund of the charges must not be made. In re Express Rates, 380 (408).

**RETURNED SHIPMENTS.**

Where a consignor orders the return of a shipment after delivery the charges paid by the consignee must not be refunded. In re Express Rates, 380 (408).

The weight basis of assessing charges on returned shipments should be the same as on shipments forwarded. Id. 380 (408).

Reasonable rule for the return by mail of shipments forwarded by express and reasonable charge for such service prescribed by Commission. Id. 380 (408).

Reasonable rule for return by freight of shipments forwarded by express and reasonable charge for such service prescribed by Commission. Id. 380 (408).

**ROUTING.**

The consignor has the right to designate in writing by what joint through route his express shipment shall move. In re Express Rates, 380 (393).

**STORAGE.**

Moderate storage charges should accrue against consignment which is held because of consignee's refusal to accept. In re Express Rates, 380 (407).

**TIME.**

The time usually occupied in transportation between the termini of joint routes should be specified in express tariffs, but this is not to be construed as a guarantee to deliver within that time. In re Express Rates, 380 (393).

**WEIGHT.**

Rule 7, providing for assessment of charges on actual weight, requires no change. In re Express Rates, 380 (407).



## EXPRESS COMPANIES—Continued.

## RULES, REGULATIONS, AND PRACTICES—Continued.

## WEIGHT—Continued.

The weight basis of assessing charges on returned shipment should be the same as on shipments forwarded. Id. 380 (408).

## TARIFFS AND PUBLICATIONS.

A new and simpler method of stating rates required by Commission, by which one who is not an expert may know what rate he should be charged. In re Express Rates, 380.

The terminal service given at local stations must be published, and it must be plainly indicated which are free-delivery stations. Id. 380 (394).

Express companies required to publish a general express directory, in which free delivery stations should be indicated. Id. 380 (394).

The joint through rates of express companies should be filed with the Commission. Id. 380 (393).

Copies of the general express directory should be posted in all express offices and copies of this and similar publications should be furnished to shippers at a reasonable charge. Id. 380 (395).

The tariff naming joint through routes should show (1) the names of the termini and number of the routes; (2) the gateways; (3) the names in alphabetical order of all the principal stations on the routes so established; and (4) an alphabetical index of stations, showing the route number by which each may be reached. Id. 380 (393).

## CLEARING HOUSE.

Clearing house for express companies, recommended by Commission. In re Express Rates, 380 (392).

## CONTRACTS WITH RAILROAD COMPANIES.

The real asset of the express company is its contract with the railroad. In re Express Rates, 380 (419).

The express companies are absolutely helpless whenever they desire to renew their contracts with the railroads. Id. 380 (436).

The reasonableness of the amount paid by the express companies to the railroad companies for the express privilege is a matter with which the Commission does not deal. Id. 380 (423).

Analysis of contracts between express companies and railroad companies. Id. 380 (455).

## COST OF OPERATIONS.

Operating expenses, analyzed. In re Express Rates, 380 (495).

Average terminal expenses, discussed. Id. 380 (490).

Operating expenses can not be used as an absolute basis for fixing express rates. Id. 380 (423).

## REVENUE.

The earnings of express companies can not be made the basis of express rates, for this is a matter which the Commission can not control. In re Express Rates, 380 (423).

Relation between earnings by passenger train for passengers and for express matter, discussed. Id. 380 (427).

Discussion of operating income and of how the revenue is divided. Id. 380 (483, 489).

## INTERCORPORATE RELATIONS.

Intercorporate relations of express companies, discussed. In re Express Rates, 380 (435).

**EXPRESS COMPANIES—Continued.****RULES, REGULATIONS, AND PRACTICES—Continued.****LIST OF EXPRESS COMPANIES AND CASH INVESTMENT.**

Adams Express Co. In re Express Rates, 380 (386, 437).

American Express Co. Id. 380 (386, 441).

Globe Express Co. Id. 380 (386, 441).

Great Northern Express Co. Id. 380 (386, 444).

National Express Co. Id. 380 (386, 445).

Northern Express Co. Id. 380 (387, 446).

Pacific Express Co. Id. 380 (447).

Southern Express Co. Id. 380 (387, 448).

United States Express Co. Id. 380 (387, 450).

Wells Fargo & Co. Id. 380 (387, 452).

Western Express Co. Id. 380 (387, 454).

**EXPRESS TRAIN.**

Higher one-way and round-trip passenger rates prescribed for express train service than local train service. *Bitzer v. W.-V. Ry. Co.* 255 (259).

**FACILITIES. See WHARVES AND WHARFAGE; DELIVERY; EMBARGO; SWITCHING.****FAMILY TICKETS. See TICKETS.****FARES. See TICKETS.****FILING TARIFFS. See TARIFFS.****FINANCIAL CONDITION. See REVENUE.****FIXING RATES. See also JURISDICTION OF COMMISSION; MEASURE OF RATE.**

The shortest line should generally fix the rate. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (101).

The Commission may award reparation for charging rate in excess of the legal rate without prescribing a rate for the future. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (370).

**FLAT RATES.**

Transit case, 340 (348); *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552; *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (617).

**FOURTH SECTION. See LONG AND SHORT HAUL.****FREE DELIVERY. See DELIVERY; SWITCHING.****GATHERING CHARGE.**

*Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (583).

**GRADED RATES.**

Where rates are based upon a classification of commodities and graded to each particular point of destination the only requirement is that the rates be in and of themselves just and reasonable. *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

Graduated scale of express rates must be modified. In re Express Rates 380 (407).

**GRADES.**

Severe operating conditions caused by grades and curves are to be considered in determining reasonableness of rates. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215). See also *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672).

**GRADUATED RATES. See GRADED RATES.**

## GRAIN.

Grain business of this country is one of vast proportions and practically all interstate carriers participate in transporting grain. *Transit case*, 340 (347).

Grain and its milled products are more universally used in this country than any other product or commodity that is transported. Competition between primary markets is keen, and a slight difference in the freight rate thereon will frequently determine the market to which it will be shipped. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (118).

A small difference in the rate on grain determines the port or market to which it will go and affects the price of the grain. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (71).

By far the greater part of the grain that moves by water is transported by water carriers that are not subject to the act. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (104).

If rates were so adjusted as to induce the shipment of grain to the milling points nearest the points of ultimate consumption, it seems inevitable that it would destroy practically all of the milling interests in the grain-growing states. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (118).

Claims for loss of grain in transit are numerous; and it is not certain that heavier car loading of grain compensates the carriers for this loss. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (118).

## GREEN RIVER.

*Bowling Green Business Men v. L. & N. R. R. Co.* 228 (232).

GROSS RATES. *See* PENALTY RATES; NET RATES.

## GROUP RATES.

Rate adjustment under which cement rates are blanketed over a minimum distance of 213 miles and over a maximum distance of 475 miles, not condemned. *In re Advances on Cement*, 209 (211).

Whatever may be Commission's authority to deal with group rates as such, without regard to differences in distance from the individual stations within the group under a long haul from the group as a whole, it is doubtful whether Commission could make a lawful order as to particular rates herein involved, in view of great disparity in distance resulting from the large area of the group and its unusual proximity to the various destinations; and the record does not furnish satisfactory basis for order fixing rates from specific stations in group. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 327 (330).

Blanket rate on lumber from the southwest to St. Louis not found unreasonable. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (222).

Blanket rate on salt found to be in violation of section 4. *In re Rates on Salt*, 192.

So long as rates are made under the group system, the distance theory must be modified. *Johnson & Son v. C. & O. Ry. Co.* 698 (701).

The same class and commodity rates apply, as a blanket, from all states embraced within Atlantic seaboard territory to the southwestern points herein involved. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (574).

Group rates discussed. *Johnson & Son v. C. & O. Ry. Co.* 698 (699); *In re Advances on Sand and Gravel*, 249; *In re Express Rates*, 380 (429); *McCloud River Lumber Co. v. S. P. Co.* 89 (95); *In re Advances on Ice*, 660 (661); *In re Advances on Lumber*, 686 (692).



**HEARING.** *See also* **ISSUE.**

Discussion of substitution of tonnage at transit points, and of transit rules, reports thereunder, and policing thereof would be pertinent in a general transit investigation and will be considered in that connection. Here the Commission will deal only with the point specified in the protest and the change that caused the suspension of tariffs. In re *Advances on Logs*, 683 (684).

Petition dismissed upon supplemental hearing. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 327.

**HIGHWAYS.**

A pipe line does not become a common carrier merely because it uses a public highway for its right of way. In re *Pipe Lines*, 1.

**HOCKING COAL FIELD.**

*New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244 (246).

**"HOLD" FREIGHT.**

*Flour City S. S. Co. v. L. V. R. R. Co.* 179 (190).

**ICING.** *See* **REFRIGERATION.****IMPORT RATES.** *See* **EXPORT AND IMPORT RATES.****IN-AND-OUT RATES.**

Transit case, 340 (357); *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (376).

**INDUSTRIAL RATES.** *See also* **DISTURBANCE OF ADJUSTMENT.**

The mills, the industry and the investments, which have been induced by a rate adjustment, should not be destroyed by a rate adjustment unless such action is absolutely necessary. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (118).

Industrial rates discussed. In re *Advances on Sand and Gravel*, 249 (250); *Bascom-Porter Co. v. A. T. & S. F. Ry. Co.* 297 (298); Transit case, 340 (359); *Boileau v. P. & L. E. R. R. Co.* 129 (132).

**INDUSTRIAL ROADS.** *See also* **CARRIERS.**

A road is not divested of its status of common carrier by reason of a common ownership of such road and of an industry which furnishes the greater part of its tonnage; such a road is entitled to a joint arrangement with a trunk line, and the payment to it of a reasonable division is not unlawful. *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (643); *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *McCloud River Lumber Co. v. S. P. Co.* 89; *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161.

**INDUSTRIAL SWITCHING.** *See* **DEMURRAGE.****INFORMAL COMPLAINT.** *See* **LIMITATION OF ACTION.****INSTRUCTIONS.** *See* **BILL OF LADING; MISROUTING.****INSURANCE.**

Charges of express companies based upon a valuation in excess of \$50 should not exceed 10 cents for each additional \$100 or fraction thereof in excess of \$50. In re *Express Rates*, 380 (397).

Insured bill of lading. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (581).

**INTENT.**

While generally the intention of the carrier in changing a rate is of small concern to the Commission, it seems that it is otherwise where the effect of the change must necessarily follow the intent. In re *Advances on Barley*, 664 (670).

**INTERCHANGE.** *See* **THROUGH ROUTES; THROUGH RATES; SWITCHING.****INTERCHANGE TRACK.**

*Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (29).

**INTERCORPORATE RELATIONS.** *See also INDUSTRIAL ROADS.*

While there may not be any statutory inhibition against the common ownership of rail and lake instrumentalities of carriage, the uses which it has subserved can not be said to be entirely consonant with the spirit of the law. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

The North Western and the Omaha roads, while operated separately, are under a substantially common ownership. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (111).

Big express companies are interlaced by stock ownership. *In re Express Rates* 380 (385).

The C. N. O. & T. P. is owned by the Southern. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (335).

Water competition nullified by community of interest between rail carriers and water carriers. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (237).

Intercorporate relations of railroad companies and bridge companies owning and operating the bridge between New Albany and Louisville. *Mfrs. & Merchants' Asso. v. A. & S. R. R. Co.* 331 (333).

Concerted action in fixing rates alleged to result from intercorporate relations. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244 (245).

**INTERESTS.** *See also PARTIES.*

The interests of all lines must be considered, and not alone those of the line that can handle the traffic with the least cost; and the interests of the consumer and of the producer must not be lost sight of. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).

**INTERMEDIATE POINTS.** *See LONG AND SHORT HAUL; PREFERENCES AND PREJUDICES.***INTERSTATE COMMERCE.**

Commission has no jurisdiction over shipment of vessel-fuel coal, moving from an interior point to a port of the same state, delivery being made to the vessel at the dock. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.

The Commission has jurisdiction over a shipment between two points in same state when for transshipment beyond state. *Pittsburgh Vein Operators of Ohio v. P. Co.* 280.

Commission ordered reduction in rates on shipment moving from a point in one state to another point in same state, which passed en route through another state. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648.

An article remains an article of interstate commerce as long as it is subject to a transit tariff. *Transit case*, 340 (351).

Interstate transportation of oil by pipe line is not divested of its interstate character by placing the ownership of the pipe line in a different corporation in each state through which the transportation passes, and by transferring title to the oil to each of such corporations contemporaneously with the entrance of the oil into the pipes of that corporation at the state line. *In re Pipe Lines*, 1.

**INTERSTATE COMMERCE COMMISSION.** *See also JURISDICTION OF COMMISSION.*

The Commission is an administrative body which may not by interpretation annul an act of Congress. *In re Pipe Lines*, 1 (3).

It is Commission's duty to see that shippers are accorded reasonable rates and that undue discrimination is not practiced against shippers, commodities, or communities. It is also the Commission's duty to consider the interests of all the shippers and communities affected and to refrain from condemning discriminations which are not unjust. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).

**INTERVENERS.** *See* PARTIES.

**INVESTIGATION.** *See* HEARING.

**ISSUE.**

Complaint held sufficient to put in issue reasonableness of a certain rule, regulation, or practice of a bill of lading. *Larkin Co. v. E. & W. T. Co.* 645 (646).

Reasonableness of rates not being an issue, complainant may test reasonableness by filing new complaint. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (141).

Reasonableness of icing charges will not be considered where petition contains no allegations in respect thereto. *Lesinsky v. A. T. & S. F. Ry. Co.* 620 (621).

Complaint not attacking reasonableness of rate per se, no conclusion on that point can be reached by Commission. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81.

Contention that rates on cottonseed from Missouri to East St. Louis should be same as to St. Louis, not passed upon, because not covered in original petition. *East St. Louis Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 588 (592).

Permission for enlargement of issue so as to include claim for reparation by interveners, denied. *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

Proposition, which was not put in issue, not considered. *In re Advances on Lumber*, 686 (696).

Question raised as to whether the reasonableness of rates per se was properly put in issue. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (363).

Where the issue is as to the legality of a rate under section 6, the Commission does not pass upon its lawfulness under other sections of the act. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (157).

The real question before the Commission is not to be narrowed. *Transit case*, 340 (346).

The extent to which, if any, collateral issues will be dealt with in a formal report, is a matter for future determination. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (148).

**IVORY TRANSFER ROUTE.**

*St. Louis Blast Furnace Co. v. V. Ry Co.* 360 (367).

**JOINT ARRANGEMENT.** *See* THROUGH ROUTES; COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT.

**JOINT RATES.** *See* THROUGH RATES.

**JUNCTION TRANSFER.**

*In re Advances on Coal*, 43 (44).

**JURISDICTION OF COMMISSION.**

**COMMERCE SUBJECT.**

The Commission has jurisdiction of a rate applicable to a shipment from an interior point to a port of the state when for transshipment by vessel to points outside the state. *Pittsburgh Vein Operators of Ohio v. S. P. Co.* 280.

No jurisdiction exists over a shipment of vessel-fuel coal from an interior point to a port of the same state, not destined for beyond. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.

A shipment between two points in the same state, passing en route through part of another state, is subject to the act. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648.

The Commission has no jurisdiction over state rates. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (584).



## JURISDICTION OF COMMISSION—Continued.

## CARRIERS SUBJECT.

## IN GENERAL.

Section 1 of the act defines as subject to its provisions any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment). *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (186).

## BRIDGES.

Bridge company or viaduct company held not to be a common carrier subject to the act. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

## EXPRESS COMPANIES.

Express companies are subject to the act. In re Express Rates, 380 (387).

## PIPE LINES.

All pipe lines engaged in the transportation of oil in interstate commerce are subject to the act. In re Pipe Lines, 1.

## STREET RAILROADS.

Street railways operating from one state to another are subject to the act. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26); *Bitzer v. W. -V. Ry. Co.* 255; *Ford v. W. -V. Ry. Co.* 632.

## WATER CARRIERS.

Lake steamship held to be under a common arrangement with rail carriers and subject to the act. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

The Commission has no jurisdiction of ocean rates. It must deal with the export and import rate differential question as though the ports were destinations instead of gateways. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).

## RATES.

## IN GENERAL.

Full authority over interstate rates is vested in the Commission by section 15. Transit case, 340 (343).

## ADVANCE IN RATES.

The act gives the Commission power to inquire into the propriety of an advance. In re Advances on Barley, 664 (669).

## FIXING RATES.

No power is vested in the Commission to compel railroads so to adjust rates as to equalize commercial or economic conditions or to overcome natural advantages. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (64); *Slider v. S. Ry. Co.* 312 (313); *National Refining Co. v. M. P. Ry. Co.* 315 (317); *Boileau v. P. & L. E. R. R. Co.* 129 (133).

## MINIMUM RATES.

The Commission has no power to prescribe minimum rates. *Boileau v. P. & L. E. R. R. Co.* 129 (133).

## RULES, REGULATIONS, AND PRACTICES.

The Commission has jurisdiction over all rules, regulations, and practices that enter into rates and determine their value and availability. Transit case, 340 (343); *Larkin Co. v. E. & W. T. Co.* 645 (647).

## THROUGH ROUTES AND JOINT RATES.

The Commission has power to order the establishment of a through route and joint rate although there is in existence other through routes capable of adequately and expeditiously handling all traffic. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

## JURISDICTION OF COMMISSION—Continued.

## DAMAGES.

The Commission may award reparation where a rate in excess of the legal rate has been charged without prescribing a rate for the future. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (370).

The Commission has no power to direct the payment of a damage claim, since a failure to pay is not a violation of the act. *Larkin Co. v. E. & W. T. Co.* 645 (646).

## PHYSICAL OPERATION.

Complaint seeking the establishment of routing for certain interstate electric passenger cars over a viaduct owned by a bridge company which is not subject to the act dismissed for want of jurisdiction, the relief sought being a plan of physical operation not within the Commission's power. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

## POLICY OF CARRIER.

In a matter of business policy the Commission can not substitute its judgment for that of the carrier. *In re Express Rates*, 380 (430).

## CONTRACTS.

The Commission has no jurisdiction to enforce a contract in any proceeding. *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639 (644).

## ANTITRUST ACT.

Antitrust matters such as unfair competition are beyond the Commission's jurisdiction. *Iowa v. A. C. L. R. R. Co.* 134 (135).

## LABELS.

System of express labels, to indicate whether charges have been prepaid or whether charges are to be collected from consignee, prescribed by Commission. *In re Express Rates*, 380.

LAKE-AND-RAIL. *See also* RAIL-AND-WATER RATES.

Defined. *Escanaba Business Men's Assn. v. A. A. R. R. Co.* 11 (12).

## LAKE-CARGO COAL.

*Boileau v. P. & L. E. R. R. Co.* 129; *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.

LEASE. *See* NOMINAL RENTAL.LEGAL RATES. *See also* TARIFFS.

Rates provided in tariffs on file with the Commission are the only legal rates. Rates provided in tariffs not on file with the Commission are not valid. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (367).

The duly published rate is the legal rate for the shipping public until it is withdrawn under condemnation by the Commission or by the voluntary act of the carriers. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (157).

A rate may be unlawful in view of section 1 and at the same time be the legally established rate under section 6. The sole test of the legality of a rate is the due publication of the rate in the manner and form prescribed by the statute. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (156).

On a shipment of coal from Indiana to Nassau, Ill., defendants collected the local rate to Depue. Held, That Nassau is a point beyond Depue and that defendants should have applied the proportional rate to Depue for beyond. Damages awarded. *Id.* 149.

## LEGAL RATES—Continued.

The same tariff named a rate of \$3.40 per ton on "acid phosphate" and a rate of \$1.75 on "acidulated rock." Acid rock and acidulated rock are synonymous terms for the same article. Complainant billed his goods as acid phosphate and at the \$3.40 rate. Defendants alleged that the publication of the \$1.75 rate on acidulated rock was a tariff error, which has since been corrected. Held, That the \$3.40 rate was legally applicable to the shipment. *Virginia-Carolina Chemical Co. v. S. Ry. Co.* 600.

There can be but one legal rate between two points and a carrier can not distinguish between those who prepay and those who do not. *In re Express Rates*, 380 (399).

In the absence of a joint through rate, the combination of locals should be applied. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (369).

The question as to what rates should be applied is not to be determined by reference to information given out by defendant's rate clerks. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (151).

Where both class and commodity rates on any article are in effect from and to the same points, the commodity rate, being specific, takes the article out of the classification and becomes the only lawful rate. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550 (551).

Between the same two points, a carrier's tariff named a joint rate on coal when loaded in box or stock cars and a higher combination rate when the coal was loaded in open cars. Held, that the combination rate was legally applicable to a shipment of coal in open cars. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624 (625).

A rate named to "St. Louis proper" is not applicable to a shipment to Carondelet, a station within the municipal limits of St. Louis, but one to which specific rates are named. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (367).

Rule of express companies that a package containing articles of more than one class shall be charged at the rate applicable to the highest rated article, unless otherwise specifically provided, not found unreasonable. *In re Express Rates*, 380 (412).

## LIABILITY AND LIMITED LIABILITY.

The validity of the provision in express receipts limiting the liability of the companies to \$50 per shipment is not determined by the Commission pending a decision on that point by the United States Supreme Court. This liability, with respect to shipments in excess of 100 pounds, should be increased in ratio to the increase in weight. *In re Express Rates*, 380 (395).

Charges of express companies based upon a valuation in excess of \$50 should not exceed 10 cents for each additional \$100 or fraction thereof over \$50. *Id.* 380 (397).

The declared valuation should be written into the express receipt or there should be written a declaration that the valuation has not been given; the use of rubber stamps for this purpose, condemned. *Id.* 380 (404).

## LIGHTERAGE.

Allowance paid to shippers "in lieu of lighterage and floatage." *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (66).



## LIMITATION OF ACTIONS.

The statute of limitations bars a reparation claim on shipments which have been delivered to the complainant more than two years prior to the filing of the complaint. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (364). A shipment which had been finally delivered at a manufacturing point was later forwarded under a subsequently established transit privilege. A claim presented more than two years after delivery at the manufacturing point, held barred by section 16. *Memphis Freight Bureau v. S. L. I. M. & S. Ry. Co.* 547.

Informal complaint stops running of statute. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (365).

LIMITED LIABILITY. *See* LIABILITY AND LIMITED LIABILITY.

LINE HAUL. *See* THROUGH ROUTES.

LINE-HAUL TARIFF.\*

*R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292 (294).

## LOADING.

Where collapsible bunker cars are presented for loading with the bunkers thrown up, carriers may provide in their tariffs for such carload minima as will require the loading of such cars to their full capacity, not exceeding two tiers in height. *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672).

Charging a higher rate on coal loaded in open cars than on coal in box or stock cars, not found unreasonable. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624.

Difference in rates when lumber is loaded in flat cars and when loaded in box cars. *In re Advance on Lumber*, 686 (688).

## LOCAL RATES.

*Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (20); *McCloud River Lumber Co. v. S. P. Co.* 89 (93); *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (571). *In re Fourth Section Application Docket 1243, 34*; *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149; *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552 (554); *In re Advances on Lumber*, 686 (692).

## LOCALITIES.

Ada, Okla., to Shreveport, La. Cement, 158.  
 Alabama to eastern points. Watermelons and cantaloupes, 560.  
 Albert Lea, Minn., from Atlantic seaboard. Class rates, 125.  
 Ansted, W. Va., to Carondelet, Mo. Coke, 360.  
 Anthony, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 Antrim, Va., to and from Washington, D. C. Passenger rates, 255.  
 Arkansas to East St. Louis, Ill. Cottonseed and products, 588.  
 Arkansas to Memphis, Tenn. Rough spoke bolts, 547.  
 Arkansas to New Albany, Ind. Lumber and other articles, 331.  
 Arkansas to New Roads, La. Cottonseed, 167.  
 Arkansas to Sioux City, Iowa. Yellow-pine lumber, 177.  
 Ashland, Ky., to c. f. a. territory. Lumber, 698.  
 Ashtabula, Ohio, from Pittsburgh, Pa., district. Coal, 129.  
 Atlanta, Wis., to and from Bruce, Wis., for beyond. Class rates, 634.  
 Atlantic seaboard to Albert Lea, Minn., and Twin Cities. Class rates, 125.  
 Atlantic seaboard from Superior, Wis. Grain products, 96.  
 Augusta, Ga., to Clifton, Ariz. Cotton waste, 264.  
 Augusta, Ga., from Cordova, Ala. Cotton-factory sweepings, 264.  
 Austin, Tex., to Louisiana. Lime, 170.

## LOCALITIES—Continued.

- Baltimore, Md. Port differentials, 55, 78, 674, 678.  
 Barboursville, W. Va., to c. f. a. territory. Lumber, 698.  
 Baton Rouge, La., from Texas. Lime, 170.  
 Battle Creek, Mich., from New Orleans, La. Sugar, 604.  
 Beaver Dam, Wis., to Stockton, Cal. Rough iron castings, 550.  
 Big Sandy Junction, Ky., to c. f. a. territory. Lumber, 698.  
 Birmingham, Ala., from Kansas City, Mo. Hay, 253.  
 Boston, Ga., from New York, Ohio River crossings, New Orleans, La., and Montgomery, Ala. Class and commodity rates, sugar, and acid phosphate, 50.  
 Boston, Mass. Port differentials, 55, 78, 674, 678.  
 Bothwell, Va., to and from Washington, D. C. Passenger fares, 255.  
 Bowling Green, Ky., to and from various points. Class and commodity rates, sugar, oranges, and hogs, 228.  
 Brazil, Ind., to Nassau, Ill. Coal, 149.  
 Brilliant, Ala., to Grenada, Miss. Bituminous coal, 318.  
 Bristol, Tenn.-Va., from New York, N. Y. Class and commodity rates, 372.  
 Bruce, Wis., to and from Atlanta, Wis., for beyond. Class rates, 634.  
 Buffalo, N. Y., to Baltimore, Md., and other points. Port differentials, 55, 674.  
 Buffalo, N. Y., from Duluth, Minn., en route to New York, N. Y. Through routes, 179.  
 Buffalo, N. Y., to Eau Claire, Wis. Pedestal, 645.  
 Buffalo-Pittsburgh line, points east of, from the southeast. Melons, 560.  
 Bureau of Engraving & Printing, Washington, D. C. Tickets, 632.  
 Burr, Va., to and from Washington, D. C. Passenger fares, 255.  
 Cairo, Ill., from the south. Lumber and other commodities, 331.  
 Cairo, Ill., from southeastern points. Lumber, 686.  
 California to Minneapolis, Minn., and Chicago, Ill. Barley, 664.  
 California to Newark, N. Y. Nursery stock. Refrigeration, 323.  
 California to Oregon, Washington, and Idaho. Lemons, 671.  
 Campbell Hall, N. Y., from Egypt, Pa. Cement, 622.  
 Canton, S. Dak., to Omaha, Nebr. Grain, 122.  
 Carondelet, Mo., from Page and Ansted, W. Va., and Glassport, Pa. Coke, 360.  
 Castana, Iowa, from Lake, Ill. Coal. Weight deductions, 302.  
 Cedar Rapids, Iowa. Grain and products. Transit privilege, 609 (617).  
 Central freight association territory to Escanaba, Mich. Class and commodity rates, 11 (13).  
 Central freight association territory from Gill, W. Va., and other points. Lumber, 698.  
 Central markets from Decatur, Ala. Barrel staves and headings, 81.  
 Charleston, S. C., to Durham, N. C. Acid phosphate, 600.  
 Chicago, Ill. Ice. Switching, 660.  
 Chicago, Ill., from Bowling Green, Ky. Hogs. Double-deck cars, 228.  
 Chicago, Ill., from California. Barley, 664.  
 Chicago, Ill., to eastern destinations. Rye and rye flour, wheat and wheat flour, 594.  
 Chicago, Ill., from Imperial Valley, Cal., and other points. Cantaloupes. Icing charges, 651.  
 Chicago, Ill., to New York, N. Y. Glucose, 134.  
 Chicago, Ill., from Oklahoma. Cottonseed products, 327.

## LOCALITIES—Continued.

- Chicago, Ill., to Platteville, Wis. Coal screenings, 321.  
 Chicago, Ill., to Portland, Oreg. Printographs and similar machines, 299.  
 Chicago, Ill., from St. Paul, Minn. Excelsior and flax tow, 606.  
 Chicago, Ill., to Utah. Cooperage, 656.  
 Chicago, Ill., from Wisconsin. Sand and gravel, 249.  
 Chicago Junction, Ohio. Grain. Transit privilege, 287.  
 Christopher, Ill., to Kansas and Nebraska. Soft coal, 43.  
 Cincinnati, Ohio, from Oklahoma. Cottonseed products, 327.  
 Cincinnati, Ohio, to San Francisco, Cal. Electrotpe and stereotype plates, 557.  
 Cincinnati, Ohio, from the south. Lumber and other commodities, 331.  
 Ciudad, Mex., from Fox River territory, Wis., via El Paso, Tex. Cheese, 620.  
 Clarksville, Tenn., from Montgomery, Ala. Class and commodity rates, 228.  
 Cleveland, Ohio, to Oshkosh, Wis. Doors, 626.  
 Cleveland, Ohio, from Pittsburgh vein No. 8 district of Ohio. Bituminous coal, 280.  
 Clifton, Ariz., from Augusta, Ga. Cotton waste, 264.  
 Coffeyville, Kans., to Hastings, Nebr., and Sedalia, Mo. Petroleum and products, 315.  
 Cordova, Ala., to Augusta, Ga. Cotton-factory sweepings, 264.  
 Dallas, Tex., from Oklahoma. Cottonseed products, 327.  
 Decatur, Ala., to central, eastern, southeastern, and western markets, and Gulf ports. Barrel staves and headings, 81.  
 Delaware. Fruit and vegetables. Refrigeration, 164.  
 Deming, N. Mex., from Louisiana and Texas. Pine lumber, 593.  
 Denver, Colo. Coal. Embargo, 618.  
 Denver, Colo., from Atlantic seaboard. Class rates, 570.  
 Denver, Colo., from Oklahoma. Cottonseed products, 327.  
 Depue, Ill., from Brazil, Ind. Coal, 149.  
 Dittlinger, Tex., to Louisiana. Lime, 170.  
 Duluth, Minn., to Buffalo, N. Y., and New York, N. Y. Through routes, 179.  
 Duluth, Minn., from grain-producing territories. Grain, 96.  
 Dunn Loring, Va., to and from Washington, D. C. Passenger fares, 255.  
 Durham, N. C., from Charleston, S. C. Acid phosphate, 600.  
 East St. Louis, Ill., from Arkansas, Oklahoma, Tennessee, and Mississippi. Cottonseed and products, 588.  
 East St. Louis, Ill., from New Albany, Ind. Coal, 312.  
 East St. Louis, Ill., from southwest. Hardwood and yellow-pine lumber, 220.  
 Eastern destinations from Decatur, Ala. Barrel staves and headings, 81.  
 Eastern destinations from Florida and other points. Watermelons and cantaloupes, 560.  
 Eastern destinations from Imperial Valley, Cal., and other points. Cantaloupes. Icing charges, 651.  
 Eastern destinations from McCloud, Cal. Lumber, 89.  
 Eastern destinations from Watertown, Wis., Minneapolis, Minn., and Chicago, Ill. Rye and rye flour, wheat and wheat flour, 594.  
 Eastern territory, via Portland, Oreg., to Willamette Valley. Class rates, 273.  
 Eau Claire, Wis., from Buffalo, N. Y. Pedestal, 645.  
 Edgelea, Va., to and from Washington, D. C. Passenger fares, 255.  
 Egypt, Pa., to Campbell Hall, N. Y. Cement, 622.  
 El Paso, Tex., to Las Cruces, N. Mex. Lumber, 297.



## LOCALITIES—Continued.

- El Paso, Tex., to Los Angeles, Cal. Automobiles, 306.  
 El Paso, Tex., from Plymouth, Wis. Cheese, 620.  
 El Paso, Tex., to San Francisco, Cal., via Portland, Oreg. Tickets, 681.  
 Elk Point, S. Dak., to Omaha, Nebr. Grain, 122.  
 Ellsworth, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 Enola, Va., from and to Washington, D. C. Passenger fares, 255.  
 Erie, Pa., to Baltimore, Md., and other points. Port differentials, 55.  
 Escanaba, Mich., from trunk line and c. f. a. territory. Class and commodity rates, 11 (13).  
 Evansville, Ind., from the south. Lumber and other commodities, 331.  
 Excelsior, Ark. Coal. Switching, 292.  
 Fairfax, Va., to and from Washington, D. C. Passenger fares, 255.  
 Falls Church division points, Va., to and from Washington, D. C. Passenger fares, 255.  
 Five Oaks, Va., to and from Washington, D. C. Passenger fares, 255.  
 Florida to eastern destinations. Cantaloupes and watermelons, 560.  
 Fort Smith, Ark., from Magnolia, Ark. Canned goods, 648.  
 Fort Worth, Tex., from Marissa, Ill. Coal, 624.  
 Fort Worth, Tex., from Oklahoma. Cottonseed products, 327.  
 Fox River territory, Wis., to El Paso, Tex. Cheese, 620.  
 Franklin, Va., to and from Washington, D. C. Passenger fares, 255.  
 Galveston, Tex., from Oklahoma. Cottonseed products, 327.  
 Galveston, Tex., to Wichita, Kans., and Oklahoma City, Okla. Class rates, 570.  
 Gas, Kans., to Missouri. Cement, 209.  
 Georgetown, Washington, D. C. Class rates. Free delivery, 629.  
 Georgia to eastern destinations. Cantaloupes and watermelons, 560.  
 Gill, W. Va., to c. f. a. territory. Lumber, 698.  
 Glassport, Pa., to Carondelet, Mo. Coke, 360.  
 Grape Creek, Ill., to Platteville, Wis. Coal screenings, 321.  
 Greenville, Tex., from Oklahoma. Cottonseed products, 327.  
 Grenada, Miss., from Herrin, Ill., and other points. Bituminous coal, 318.  
 Gulf ports from Decatur, Ala., and Memphis, Tenn. Barrel staves and headings, 81.  
 Gulfport, Miss., from Decatur, Ala., and Memphis, Tenn. Barrel staves and headings, 81.  
 Hastings, Nebr., from Coffeyville, Kans. Petroleum and products, 315.  
 Herrin, Ill., to Grenada, Miss. Bituminous coal, 318.  
 Hills, La., from Monticello, Ark. Cottonseed meal, 309.  
 Hoboken, N. J., from Taylor, Pa. Anthracite coal, 140.  
 Hocking district, Ohio, to Toledo, Ohio. Lake cargo coal, 244.  
 Huron, Ohio, from Pittsburgh vein, No. 8 district of Ohio. Bituminous coal, 280.  
 Huron, S. Dak., from grain-producing territory. Grain, 96.  
 Hutchinson, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 Idaho from California. Lemons, 671.  
 Idaho from Utah mines and Rock Spring fields. Coal, 213.  
 Illinois mines to Kansas and Nebraska. Coal, 43.  
 Imperial Valley, Cal., to eastern destinations. Cantaloupes. Icing charges, 651.  
 Indiana to Nassau, Ill. Coal, 149.  
 Iola, Kans., to Missouri. Cement, 209.

## LOCALITIES—Continued.

- Iowa from Lake, Ill. Coal. Weight deductions, 302.  
 Iowa to Superior, Wis., and other milling points. Grain, 96.  
 Ivy Rock, Pa. Demurrage, 27.  
 Jacksonville, Fla., to Bowling Green and Louisville, Ky. Oranges, 228.  
 Kanopolis, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 Kansas. Grain. Transit privilege, 552.  
 Kansas to Mississippi River. Salt, 192.  
 Kansas from Springfield and southern Illinois mines. Soft coal, 43.  
 Kansas gas belt to Missouri. Cement, 209.  
 Kansas City, Kans., to and from Kansas City, Mo. Routing, 22.  
 Kansas City, Mo. Grain. Transit privilege, 552.  
 Kansas City, Mo. Lumber. Switching charge, 205.  
 Kansas City, Mo., to Birmingham, Ala. Hay, 253.  
 Kansas City, Mo., to and from Kansas City, Kans. Routing, 22.  
 Kansas City, Mo., from Oklahoma. Cottonseed and products, 327.  
 Kansas City, Mo., from St. Paul, Minn. Excelsior and flax tow, 606.  
 Knoxville, Tenn., from New York, N. Y. Class and commodity rates, 372.  
 La Crosse, Wis., to Portland, Oreg. Printographs and similar machines, 299.  
 Lackawanna region, Pa., to tidewater. Anthracite coal, 140.  
 Lake, Ill., to Iowa. Coal. Weight deductions, 302.  
 Lake Erie ports from Pittsburgh vein No. 8 district of Ohio. Bituminous coal, 280.  
 Laona Junction, Wis. Lumber. Through routes and joint rates, 639 (640).  
 Las Cruces, N. Mex., from El Paso, Tex. Lumber, 297.  
 Lewis street, Va., to and from Washington, D. C. Passenger fares, 255.  
 Library, Va., to and from Washington, D. C. Passenger fares, 255.  
 Lime City, Tex., to Louisiana. Lime, 170.  
 Lindale, Ga., to Paducah, Ky. Cotton-factory sweepings, 264.  
 Little River, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 Little Rock, Ark. Marble. Switching, 292.  
 Los Angeles, Cal., from El Paso, Tex. Automobiles, 306.  
 Louisiana to Deming, N. Mex. Pine lumber, 598.  
 Louisiana from Monticello, Ark. Cottonseed meal and hulls, 309.  
 Louisiana to Sioux City, Iowa. Yellow-pine lumber, 177.  
 Louisiana from Texas. Lime, 170.  
 Louisville, Ky., from Arkansas and southern points. Lumber and other commodities, 331.  
 Louisville, Ky., from New Albany, Ind. Sand and gravel, 312.  
 Louisville, Ky., from New Orleans, La. Sugar, 228.  
 Louisville, Ky., from Oklahoma. Cottonseed products, 327.  
 Lynn, Mass., to San Francisco, Cal. Bottle-washing machines, 592.  
 Lyons, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 McCloud, Cal., to eastern destinations. Lumber, 89.  
 McFarland, Cal., to Newark, N. Y. Nursery stock. Refrigeration, 323.  
 McPherson, Cal., to Newark, N. Y. Nursery stock. Refrigeration, 323.  
 McNeil, Tex., to Louisiana. Lime, 170.  
 Magnolia, Ark., to Fort Smith, Ark. Canned goods, 648.  
 Mansfield, Ohio. Grain. Transit privilege, 287.  
 Marissa, Ill., to Fort Worth, Tex. Coal, 624.  
 Marshall, Tex., from New Orleans, La. Cotton-press machinery, 304.  
 Maryland. Fruit and vegetables. Refrigeration, 164.  
 Marysville, Cal., from the east. Class and commodity rates, 46.

## LOCALITIES—Continued.

- Meeks, Ky., to c. f. a. territory. Lumber, 698.
- Memphis, Tenn. Lumber. Transit privilege, 602.
- Memphis, Tenn. Grain and products. Transit privilege, 609.
- Memphis, Tenn., from Arkansas. Rough spoke bolts, 547.
- Memphis, Tenn., to central, eastern, southwestern, and western markets, and Gulf ports. Barrel staves and headings, 81.
- Michigan to Missouri. Salt, 192.
- Mildred, Kans., to Missouri. Cement, 209.
- Milly Plantation, La., from Monticello, Ark. Cottonseed meal, 309.
- Milwaukee, Wis., from grain-producing territories. Grain, 96.
- Minneapolis, Minn., from California. Barley, 664.
- Minneapolis, Minn., to eastern destinations. Rye and rye flour, wheat and wheat flour, 594.
- Minneapolis, Minn., from grain-producing territories. Grain, 96.
- Minneapolis, Minn., to New York, N. Y. Flour, 179.
- Minneapolis, Minn., from southwestern Missouri River points. Apples, 38.
- Minnesota to Superior, Wis., and other milling points. Grain, 96.
- Mississippi to East St. Louis, Ill. Cottonseed and products, 588.
- Mississippi to Sioux City, Iowa. Yellow-pine lumber, 177.
- Mississippi River from Kansas. Salt, 192.
- Mississippi River valley from Memphis, Tenn., and other points. Grain and products. Transit privilege, 609 (613).
- Missouri from Kansas gas belt. Cement, 209.
- Missouri River. Grain. Elevation allowances, 197.
- Missouri River to Willamette Valley. Class rates, 273.
- Missouri River points to Minneapolis and St. Paul, Minn., and other points in that territory. Apples, 38.
- Montana from Utah mines and Rock Spring fields. Coal, 213.
- Montgomery, Ala., to Boston, Quitman, and Thomasville, Ga. Acid phosphate, 50.
- Montgomery, Ala., from Bowling Green, Ky., and Clarksville, Tenn. Class and commodity rates, 228.
- Monticello, Ark., to Louisiana. Cottonseed meal, 309.
- Morehead, Ky., to c. f. a. territory. Lumber, 698.
- Morristown, Tenn., from New York, N. Y. Class and commodity rates, 372.
- Morristown, Tenn., from Pittsburgh, Pa., and Wheeling, W. Va. Glassware, 372.
- Mount Vernon, Va., to and from Washington, D. C. Passenger fares, 255.
- Nashville, Tenn. Lumber. Transit privilege, 683.
- Nashville, Tenn. Relative rates, 228.
- Nassau, Ill., from Brazil, Ind. Coal, 149.
- Nebraska. Grain. Transit privilege, 552.
- Nebraska from Springfield and southern Illinois mines. Soft coal, 43.
- Nevada to Minneapolis, Minn., and other points. Barley, 664.
- New Albany, Ind., from Arkansas and southern points. Lumber and other articles, 331.
- New Albany, Ind., to East St. Louis, Ill., and St. Louis, Mo. Coal, 312.
- New Albany, Ind., to Louisville, Ky. Sand and gravel, 312.
- New Albany, Ind., en route from Page, W. Va., to Carondelet, Mo. Coke, 360.
- New Jersey. Fruit and vegetables. Refrigeration, 164.
- New Orleans, La., to Battle Creek, Mich. Sugar, 604.



## LOCALITIES—Continued.

- New Orleans, La., to Boston, Quitman, and Thomasville, Ga. Sugar, 50.  
 New Orleans, La., to Bowling Green, Ky., and Louisville, Ky. Sugar, 228.  
 New Orleans, La., from Decatur, Ala., and Memphis, Tenn. Barrel staves and headings, 81.  
 New Orleans, La., to Marshall, Tex. Cotton-press machinery, 304.  
 New Orleans, La., from Oklahoma. Cottonseed products, 327.  
 New Roads, La., from southern Arkansas. Cotton seed, 167.  
 New York to Boston, Quitman, and Thomasville, Ga. Class and commodity rates, 50.  
 New York, N. Y. Melons. Delivery, 560.  
 New York, N. Y. Port differentials, 55, 78, 674, 678.  
 New York, N. Y. Fruit and vegetables. Refrigeration, 164.  
 New York, N. Y., from Chicago, Ill. Glucose, 134.  
 New York, N. Y., from Duluth, Minn., via Buffalo, N. Y. Through routes, 179.  
 New York, N. Y., from Florida and other points. Watermelons and cantaloupes, 560.  
 New York, N. Y., from Minneapolis, Minn. Flour, 179.  
 New York, N. Y., to Morristown, Tenn. Class and commodity rates, 372.  
 New York Lighterage Station, N. J., from Taylor, Pa. Anthracite coal, 140.  
 Newark, N. Y., from California. Nursery stock. Refrigeration, 323.  
 Nickerson, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.  
 North Baton Rouge, La., from Texas. Lime, 170.  
 North Carolina to eastern points. Watermelons and cantaloupes, 560.  
 North Dakota to Superior, Wis., and other milling points. Grain, 96.  
 Northeastern points from Florida and other points. Watermelons and cantaloupes, 560.  
 Oakton, Va., to and from Washington, D. C. Passenger fares, 255.  
 Oglesby, Tex., to Louisiana. Lime, 170.  
 Ohio. Grain. Transit privilege, 287.  
 Ohio River. Grain. Elevation allowances, 197.  
 Ohio River crossings to Boston, Quitman, and Thomasville, Ga. Class and commodity rates, 50.  
 Oklahoma. Grain. Transit privilege, 552.  
 Oklahoma to East St. Louis, Ill. Cottonseed and products, 588.  
 Oklahoma to Kansas City, Mo., and other points. Cottonseed products, 327.  
 Oklahoma City, Okla., from Galveston, Tex., and Atlantic seaboard. Class rates, 570.  
 Olga, Tex., to Louisiana. Lime, 170.  
 Omaha, Nebr., from St. Paul, Minn. Excelsior and flax tow, 606.  
 Omaha, Nebr., from South Dakota. Grain, 122.  
 Onalaska, Tex., to interstate points. Lumber. Through routes, 161 (162).  
 Oregon from California. Lemons, 671.  
 Oregon from Utah mines and Rock Spring fields. Coal, 213.  
 Oshkosh, Wis., from Cleveland, Ohio. Doors, 626.  
 Paducah, Ky., from Augusta and Lindale, Ga. Cotton-factory sweepings, 264.  
 Page, W. Va., to Carondelet, Mo. Coke, 360.  
 Pennsylvania. Fruit and vegetables. Refrigeration, 164.  
 Philadelphia, Pa. Port differentials, 55, 78, 674, 678.

## LOCALITIES—Continued.

- Pipe Mines, Ala., to Grenada, Miss. Bituminous coal, 318.  
 Pittsburgh, Pa., district to Ashtabula, Ohio. Coal, 129.  
 Pittsburgh, Pa., to Morristown, Tenn. Glassware, 372.  
 Pittsburgh vein No. 8, district of Ohio, to Huron and Cleveland, Ohio. Bituminous coal, 280.  
 Platteville, Wis., from Chicago, Ill. Coal screenings, 321.  
 Plymouth, Wis., to El Paso, Tex. Cheese, 620.  
 Portland, Oreg., en route from eastern defined territory to Willamette Valley. Class rates, 273.  
 Portland, Oreg., from La Crosse, Wis., and Chicago, Ill. Printographs and similar machines, 299.  
 Portland, Oreg., from Pullman Junction, Ill. Lime-sulphur, insect poison, liquid sheep dip, 545.  
 Portland, Oreg., to San Francisco, Cal. Tickets, 681.  
 Portland, Oreg., to San Francisco, Cal., and bay points. Class and commodity rates, 34.  
 Potomac River, points north of, from the southeast. Melons, 560.  
 Price, Utah, to Idaho, Montana, Washington, and Oregon. Coal, 213.  
 Pullman Junction, Ill., to Portland, Oreg. Lime-sulphur, insect poison, liquid sheep dip, 545.  
 Quitman, Ga., from New York, Ohio River crossings, New Orleans, La., and Montgomery, Ala. Class and commodity rates, sugar, and acid phosphate, 50.  
 Robey, Va., to and from Washington, D. C. Passenger fares, 255.  
 Rock Spring mines to Idaho, Montana, Washington, and Oregon. Coal, 213.  
 Round Rock, Tex., to Louisiana. Lime, 170.  
 St. Louis, Mo. Grain and products. Transit privilege, 609 (616).  
 St. Louis, Mo., from Kansas. Salt, 192.  
 St. Louis, Mo., from Kansas gas belt. Cement, 209.  
 St. Louis, Mo., from New Albany, Ind. Coal, 312.  
 St. Louis, Mo., from Oklahoma. Cottonseed products, 327.  
 St. Louis, Mo., from St Paul, Minn. Excelsior and flax tow, 606.  
 St. Louis, Mo., from southeastern points. Lumber, 686.  
 St. Louis, Mo., from southwest. Hardwood and yellow-pine lumber, 220.  
 St. Louis, Mo., to Utah. Cooperage, 656.  
 St. Louis Plantation, La., from Monticello, Ark. Cottonseed meal, 309.  
 St. Paul, Minn., to Chicago, Ill., and other destinations. Excelsior, 606.  
 St. Paul, Minn., from southwestern Missouri River points. Apples, 38.  
 San Francisco Bay to Portland, Oreg. Class and commodity rates, 34.  
 San Francisco, Cal., from Cincinnati, Ohio. Electrotype and stereotype plates, 557.  
 San Francisco, Cal., from Lynn, Mass. Bottle-washing machines, 592.  
 San Francisco, Cal., from El Paso, Tex., via Portland, Oreg. Tickets, 681.  
 San Francisco, Cal., from Portland, Oreg., and Willamette River. Class and commodity rates, 34.  
 San Jose, Cal., from the east. Class and commodity rates, 46.  
 Sandusky, Ohio. Grain. Transit privilege, 287.  
 Sanger, Va., to and from Washington, D. C. Passenger fares, 255.  
 Santa Clara, Cal., from the east. Class and commodity rates, 46.  
 Santa Rosa, Cal., from the east. Class and commodity rates, 46.  
 Security, Md., to Virginia and West Virginia. Cement, 290.  
 Sedalia, Mo., from Coffeyville, Kans. Petroleum and products, 315.

## LOCALITIES—Continued.

- Sherman, Tex., from Oklahoma. Cottonseed products, 327.
- Shreveport, La., from Ada, Okla. Cement, 158.
- Sioux City, Iowa, from Arkansas, Louisiana, Mississippi, and Texas. Yellow-pine lumber, 177.
- Sioux City, Iowa, from grain-producing territory. Grain, 96.
- Sioux City, Iowa, from Lake, Ill. Coal. Weight deductions, 302.
- South Carolina to eastern destinations. Watermelons and cantaloupes, 560.
- South Dakota to Omaha, Nebr. Grain, 122.
- South Dakota to Superior, Wis., and other milling points. Grain, 96.
- South Omaha, Nebr., from Oklahoma. Cottonseed products, 327.
- Southeastern markets from Decatur, Ala. Barrel staves and headings, 81.
- Southeastern points to Cairo, Ill., and St. Louis, Mo. Lumber, 686.
- Southern territory to New Albany, Ind. Lumber and other articles, 331.
- Southwestern producing points to St. Louis, Mo. Hardwood and yellow-pine lumber, 220.
- Springfield and southern Illinois mines to Kansas and Nebraska. Soft coal, 43.
- Springfield, Mo., from Kansas gas belt. Cement, 209.
- Sterling, Kans., to St. Louis, Mo., and Mississippi River. Salt, 192.
- Stockton, Cal., from Beaver Dam, Wis. Rough iron castings, 550.
- Sturgis, Ky., to Grenada, Miss. Bituminous coal, 318.
- Superior, Wis., from grain-producing territories and to Atlantic seaboard. Grain and products, 96.
- Taylor, Pa., to Hoboken, N. J. Anthracite coal, 140.
- Tennessee to East St. Louis, Ill. Cottonseed and products, 588.
- Texas to Deming, N. Mex. Pine lumber, 598.
- Texas to Louisiana. Lime, 170.
- Texas to Sioux City, Iowa. Yellow-pine lumber, 177.
- Thomasville, Ga., from New York, Ohio River crossings, New Orleans, La., and Montgomery, Ala. Class and commodity rates, sugar, and acid phosphate, 50.
- Tidewater from Wyoming region, Pa. Anthracite coal, 140.
- Tiffin, Ohio. Grain. Transit privilege, 287.
- Toledo, Ohio, from Hocking district, Ohio. Lake-cargo coal, 244.
- Trunk line territory to Escanaba, Mich. Class and commodity rates, 11 (13).
- Twin cities from Atlantic seaboard. Class rates, 125.
- Union Bridge, Md., to Virginia and West Virginia. Cement, 290.
- Utah from Chicago, Ill., St. Louis, Mo., and other points. Cooperage, 656.
- Utah to Minneapolis, Minn., and other points. Barley, 664.
- Utah mines to Idaho, Montana, Washington, and Oregon. Coal, 213.
- Virginia to northeastern points. Watermelons and cantaloupes, 560.
- Virginia from Security and Union Bridge, Md. Cement, 290.
- Washington from California. Lemons, 671.
- Washington from Utah mines and Rock Spring fields. Coal, 213.
- Washington, D. C. Class rates. Free delivery, 629.
- Washington, D. C. Fruit and vegetables. Refrigeration, 164.
- Washington, D. C. Tickets. Train fare, 632.
- Washington, D. C., to and from Virginia. Passenger fares, 255.
- Watertown, Wis., to eastern destinations. Rye and rye flour, wheat and wheat flour, 594.
- Wedderburn, Va., to and from Washington, D. C. Passenger fares, 255.



## LOCALITIES—Continued.

- West Fairport, Ohio, to Baltimore, Md., and other points. **Port differentials**, 55.
- West Virginia. Fruit and vegetables. Refrigeration, 164.
- West Virginia from Security and Union Bridge, Md. Cement, 290.
- Western markets from Decatur, Ala. Barrel staves and headings, 81.
- Wheatcroft, Ky., to Grenada, Miss. Bituminous coal, 318.
- Wheeling, W. Va., to Morristown, Tenn. Glassware, 372.
- Whiting, Iowa, from Lake, Ill. Coal. Weight deductions, 302.
- Wichita, Kans., from Galveston, Tex., and Atlantic seaboard. **Class rates**, 570.
- Willamette River to San Francisco, Cal. Class and commodity rates, 34.
- Willamette Valley from eastern defined territory, via Portland, Oreg. **Class rates**, 273.
- Willmar, Minn., to Superior, Wis., and other points. Grain, 96.
- Wisconsin to Chicago, Ill. Sand and gravel, 249.
- Woodford, Va., to and from Washington, D. C. Passenger fares, 255.
- Wyoming coal region, Pa., to tidewater. Anthracite coal, 140.
- Yankton, S. Dak., from grain-producing territory. Grain, 96.
- Yuma, Ariz., to eastern destinations. Cantaloupes. Icing charges, 651.

LOCATION. See ADVANTAGES; PREFERENCES AND PREJUDICES.

LOGGING ROAD. See INDUSTRIAL ROADS.

## LONG AND SHORT HAUL.

Where a direct line observes the rule of section 4, a circuitous line may meet the rate of the direct line although it makes a higher rate to the intermediate point, provided such intermediate rate is reasonable. In re Rates on Salt, 192 (195).

A line is ordinarily treated as circuitous where it exceeds the direct line in mileage by not less than 15 per cent. It is not held that this rule should be one of universal application; it is possible that other elements besides mere distance should be considered. In re Rates on Salt, 192 (195).

While market competition is to be considered, it constitutes no justification for a deviation from the fourth section in these cases. In re Rates on Salt, 192 (194); Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co. 604 (606).

Railroad competition in and of itself would not, it seems, justify charging a higher rate at an intermediate point in the southern states. In re Advances on Lime, 170 (172).

Railroad competition justifies a circuitous line in deviating from the rule of section 4 where it does so to meet the rate of a direct line which observes the rule, provided the intermediate rate is reasonable. In re Rates on Salt, 192 (195).

Water competition justifies charging a higher rate on sugar from New Orleans to Bowling Green than to Louisville. Bowling Green Business Men v. L. & N. R. R. Co. 228 (240).

Permission denied to direct line to disregard rule of section 4 in transporting salt from the Kansas field to the Mississippi River. In re Rates on Salt, 192.

Carriers not permitted to maintain higher rates to and from Bowling Green than to and from Nashville; but higher rates on sugar from New Orleans to Bowling Green than to Louisville permitted. Bowling Green Business Men v. L. & N. R. R. Co. 228.

## LONG AND SHORT HAUL—Continued.

Battle Creek, Mich., is subject to a discrimination in violation of section 4 by the maintenance on sugar, from New Orleans, of a rate higher to Battle Creek than to Detroit, Cleveland, and Toledo. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (606).

Temporary relief granted, permitting carriers to charge higher rates at intermediate points on lime in southern states. *In re Advances on Lime*, 170 (172).

Same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco to Portland not justified. *In re Fourth Section Application Docket No. 1243*, 34.

Higher rates southbound from Portland to points inland than to San Francisco are justified. *Id.* 34.

Higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River not justified. *Id.* 34.

Rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland not justified. *Id.* 34.

Reasonableness of higher rates existing at points between San Francisco and Portland or the discrimination now existing against such intermediate points not justified. *Id.* 34.

Morristown, Tenn., and other points intermediate Bristol and Knoxville, on the direct line of the Southern road are entitled to rates from New York and related points not higher than rates from these points to Knoxville; and the commodity rate on glassware from Pittsburgh to Morristown should not exceed the combination on Bristol. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372.

Maintenance of a higher rate from Plymouth to El Paso than to Ciudad Juarez, Mexico, not found to be in violation of section 4, as it existed prior to June 18, 1910. *Lesinsky Co. v. A. T. & S. F. Ry. Co.* 620.

There may be a violation of section 4 under a state of facts not constituting a violation of section 3. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

There may be a violation of section 3 for reasons other than those covered by section 4. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

Fourth section question not passed upon. *Grenada Oil Mill v. I. C. R. R. Co.* 318 (320); *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (60); *Commercial Club of Superior v. G. N. Ry. Co.* 96 (115); *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (339); *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

LOSS AND DAMAGE. *See* DAMAGES; CLAIMS; SUBSTITUTED ARTICLES.

## LOW RATES.

Many of the rates now in effect are too low, both absolutely and relatively. *In re Advances on Lime*, 170 (171).

A road should not carry the traffic of one city at less than the cost of service and thus unduly burden other traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

MALTING IN TRANSIT. *See* TRANSIT PRIVILEGES.

## MAPS.

Maps published by a state commission are not official publications of defendant carriers and can not control their rates. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (154).

## MARINE INSURANCE.

Southwestern Shippers Traffic Asso. *v.* A. T. & S. F. Ry. Co. 570 (581).

MARKET COMPETITION. *See* COMPETITION.MARKETS. *See also* ADVANTAGES; COMMERCIAL AND ECONOMIC CONDITIONS.

That a city is a trade center is no reason for giving it unfair rates. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (239).

That a city is an important market should be a reason against rather than for discriminating in its favor. *In re Rates on Salt*, 192 (194).

The function of a market is not the controlling element in determining the reasonableness of rates. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (121).

It is beyond the lawful right of a carrier to determine what traffic it will take into and out of a given city. It must perform either service at the request of the shipper for a reasonable charge. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (615).

Carriers may not by arbitrary rate adjustments determine that one market shall have a certain territory and another market a certain other territory. Every market and every shipper has a right to go as far as reasonable and nondiscriminatory rates will carry. *In re Advances on Barley*, 664 (669).

Under reasonable and nondiscriminatory rates, producers, dealers in, and consumers of, grain have a right to select the markets to which they will ship it, at which they will handle it, and the routes via which it shall move. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (109).

MARKING PACKAGES. *See also* LABELS.

Packages containing fragile articles consisting wholly or in part of, or contained in, glass, must be plainly marked to indicate contents. *In re Express Rates*, 380 (405).

It should be provided by a rule that a shipper who refuses to furnish a return address should be required to prepay express charges. *Id.* 380 (404).

The use of rubber stamps to indicate that the value of express packages was asked but not declared, prohibited; the declared value or a declaration that no value was given must be written into the receipt. *Id.* 380 (404).

Lower rate conditioned upon marking package "value not exceeding \$10" discussed. *Id.* 380 (399).

## MEASURE OF RATE.

## COMMERCIAL AND ECONOMIC CONDITIONS.

It is not the function of the Commission to equalize commercial or economic conditions. *See Boileau v. P. & L. E. R. R. Co.* 129 (133); *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75); *Slider v. S. Ry. Co.* 312 (313); *In re Advances on Cooperage*, 656 (659); *Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co.* 158 (160).

## COMPETITIVE RATE.

A competitive rate is not a measure of the reasonableness of a noncompetitive rate. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (103).

## COST OF OPERATIONS.

Severe operating conditions caused by grades and curves are to be considered in determining the reasonableness of a rate. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215). *See also Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672).

Increased cost of operating considered. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (227).



**MEASURE OF RATE—Continued.****COST OF OPERATIONS—Continued.**

Operating expenses can not be used as an absolute test of the reasonableness of express rates. *In re Express Rates*, 380 (423).

The question of increased cost of operations goes more to the reasonableness of a rate than to the form of discrimination herein presented. *Santa Rosa Traffic Asso. v. S. P. Co.* 46 (48).

Whatever defects inhere in the process of analyzing operating expenses do not negative the guiding value of the statistical results arrived at. *Pittsburgh Vein Operators' Asso. of Ohio v. P. Co.* 280 (285).

**COST OF SERVICE.**

Cost figures are of great value. *Pittsburgh Vein Operators of Ohio v. P. Co.* 280 (285).

Cost of service is but one of the elements to be considered. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).

**DENSITY.**

That traffic from a certain town moves in trainloads is a circumstance to be considered. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215).

**DISTANCE.**

Distance alone is not controlling. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (71); *McCloud River Lumber Co. v. S. P. Co.* 89 (95).

As long as rates are made under the group system, the distance theory must be modified. *McCloud River Lumber Co. v. S. P. Co.* 89 (95).

Distance is controlling where transportation conditions are substantially similar. *Commercial Club of Superior v. G. N. Ry. Co.* 96.

Carriers are not required to disregard differences in distance. *R. R. Com. of Oregon v. S. P. Co.* 273 (277); *Commercial Club of Superior v. G. N. Ry. Co.* 96 (116).

Differences in distance of much more than 264 miles are frequently disregarded under the blanket plan of rate making. *In re Advances on Barley*, 664 (667).

The disadvantage of distance can not be ignored. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215); *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122 (123).

The average haul is an important fact in determining the reasonableness of a rate. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (223).

The future may compel greater recognition of distance in the making of many rates, but the present business structure was not developed on that principle, and if a change is to be made it must be a gradual one. *Boileau v. P. & L. E. R. R. Co.* 129 (132).

**DIVISION OF THROUGH RATES.**

Commission does not accept a comparison of divisions as proving unreasonableness of a rate. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125 (128).

**MONOPOLY RIGHTS.**

Express rates can not be based upon the monopoly right to be the exclusive forwarder over one or more railroads. *In re Express Rates*, 380 (431).

**PACKING.**

Fact that a given article is shipped in same manner as another article, considered in determining comparative reasonableness of rate. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

## MEASURE OF RATE—Continued.

## RATE ADJUSTMENTS.

Much weight is given to adjustments of long standing to which commercial conditions have adjusted themselves. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (74).

## REVENUE.

## IN GENERAL.

The earnings of the express companies can not be used as a basis for fixing rates. *In re Express Rates*, 380 (423).

## CAR EARNINGS.

Car earnings alone are not an absolutely correct test of reasonableness. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

## TON-PER-MILE REVENUE.

Ton-mile revenue alone is not an absolutely correct test of reasonableness. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

Ton-per-mile comparisons are frequently resorted to by the Commission. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (142).

A combination of both ton-mile and car earnings is a more correct test of reasonableness than either of those factors alone. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

## TONNAGE.

Amount of tonnage, considered. *In re Advances on Cooperage*, 656 (659).

## TRAIN-BREAKING POINT.

That trains are broken at a given point seems to be of value in determining the reasonableness of a rate. *Johnson & Son v. C. & O. Ry Co.* 698 (701).

## RISK.

Considered in determining reasonableness of rate. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

## VALUATION.

The value of the property owned and used by express companies can not be used as a basis for fixing rates. *In re Express Rates*, 380 (418).

## VALUE OF COMMODITY.

Considered in determining reasonableness. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

## VOLUME.

A shipper is entitled to have his commodities move at a reasonable rate without reference to the number of his shipment. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

## WEAK AND STRONG LINES.

The interests of all lines must be considered and not alone those of the line that can handle the traffic with the least cost. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).

MEETING COMPETITION. *See* COMPETITION.MILEAGE. *See* CONSTRUCTIVE MILEAGE; DISTANCE.MILLING IN TRANSIT. *See* TRANSIT PRIVILEGES.

## MINIMUM CHARGE.

*Larkin Co. v. E. & W. T. Co.* 645 (646); *In re Express Rates*, 380 (408).

## MINIMUM RATE.

While equity and efficiency in regulation requires power in the Commission to prescribe a minimum rate, Congress has not yet granted such power to the Commission. *Boileau v. P. & L. E. R. R. Co.* 129 (133).

Commission must insist that railroad companies charge not less than a certain sum, found to be reasonable, for commercial elevation. *In re Elevation Allowances*, 197 (203).

**MINIMUM RATE—Continued.**

A road should not carry traffic to one point at less than the cost of service and thus unduly burden other traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (75).

**MINIMUM WEIGHT.** *See* WEIGHT; CAR SIZE.

**MISQUOTATION OF RATE.** *See* LEGAL RATES.

**MISROUTING.**

It is the duty of a carrier to forward a shipment via the cheapest reasonable route available under the routing instructions. *Paine Lumber Co. v. C. C. C. & St. L. Ry. Co.* 626 (627).

While carriers have no right to disregard routing instructions contained in bills of lading accepted by them, reparation will not be awarded in a case where the misrouting is not the cause of the damage. *Lathrop, Shea, Henwood Co. v. L. V. R. R. Co.* 622.

Where a shipment is offered with routing instructions which permit of forwarding via either of two routes, both involving the same carriers and both carrying the same joint through rate, it is not misrouting for a carrier to send the shipment via one of such routes by which the aggregate of intermediate rates is greater than the other. *Paine Lumber Co. v. C. C. C. & St. L. Ry. Co.* 626.

**MIXED FEED.** *See* TRANSIT PRIVILEGES.

**MIXED SHIPMENT.** *See* TRANSIT PRIVILEGES; CONSOLIDATED SHIPMENTS.

**MODIFICATION OF ORDER.** *See* ORDERS.

**MONOPOLIES.**

Antitrust matters such as unfair competition are beyond the jurisdiction of the Commission. *Iowa v. A. C. L. R. Co.* 134 (135).

Monopolistic conditions which have existed in water traffic between the Atlantic seaboard and Galveston have resulted in excessive charges.

*Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (582).

**NATURAL ADVANTAGES.** *See* ADVANTAGES.

**NATURAL ROUTE.**

*Southwestern Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (585).

**NET RATES.**

*Memphis Freight Bureau v. St. L. & S. F. R. R. Co.* 602 (603); *New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167 (168).

**NET WEIGHT.** *See* WEIGHT.

**NOMINAL RENTAL.**

Legality of leasing a railroad-owned elevator to a shipper at a nominal rental, not passed upon. *Rosenbaum Bros. v. B. & O. R. R. Co.* 287 (288).

**NONAGENCY STATION.**

Passengers boarding cars at nonagency station held entitled to purchase round-trip tickets on street railway. *Ford v. W.-V. Ry. Co.* 632.

**NOTICE.** *See also* DEMURRAGE.

Express companies should give notice to both consignor and consignee of loss or destruction of a shipment; and if the consignee refuse a shipment, a written notice should be mailed to the consignor. *In re Express Rates*, 380 (406).

Express companies should immediately acknowledge receipt of claims and should within six months notify the claimant in writing of the disposition to be made thereof. *Id.* 380 (396).

**OCEAN RATES.** *See* WATER CARRIERS.

**OFFICIAL RAILWAY GUIDE.**

Is not an official publication of defendant carriers and can not control their tariffs. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (154).



## OMNIBUS COMPLAINT.

Escanaba Business Men's Asso. *v.* A. A. R. R. Co. 11 (19).

OPTION MARKET. *See* COMMERCIAL AND ECONOMIC CONDITIONS.  
ORDERS.

No order entered; defendants given opportunity to comply. *In re* Elevation Allowances, 197.

Order issued to carriers to show cause why rates proposed by Commission should not be put into effect. *In re* Express Rates, 380 (434).

Complainant's application for modification of order denied. *Boileau v. P. & L. E. R. R. Co.* 129.

ORIGIN. *See also* PROPORTIONAL RATES.

Where, because of difference in distance, rates herein are different from a junction point of a carrier's own main lines or branches, the differential should not be higher from points beyond from which the traffic moves through that junction than at such junction point. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (120).

Rail carriers may take into consideration the previous or further haul of export and import traffic, and may reasonably differentiate it from domestic traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).

## ORIGINATING CHARGES.

Southwestern Shippers Traffic Asso. *v.* A. T. & S. F. Ry. Co. 570 (582).

## "ORIGINATING ROAD."

L. & N. R. R. Co. *v.* M. St. P. & S. S. M. Ry. Co. 639 (640).

## OUT-OF-LINE RATES.

*In re* Advances on Lumber, 686 (693).

OVERCHARGE. *See also* DAMAGES; LEGAL RATES.

The collection of a rate in excess of the legal rate. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (158); *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360.

To avoid criminal prosecutions, double collection of legal charges must cease. *In re* Express Rates, 380.

Refund of charges should be made within 24 hours in the event of an overcollection on an express package through mistake. *Id.* 380 (392).

OWNERSHIP. *See* INDUSTRIAL ROADS; INTERCORPORATE RELATIONS.

## PACKAGE FREIGHT.

*In re* Express Rates, 380.

## PACKING.

Express rules should require safe packing. Express rules 14 and 19 to 24, inclusive, not found unreasonable. *In re* Express Rates, 380 (405, 410, 412).

Rule excluding from transportation benzine, gasoline, and naphtha when contained in wooden barrels not found unlawful. *Red "C" Oil Mfg. Co. v. A. & V. Ry. Co.* *Id.* 542.

Tariff provision relating to crating of articles found to be ambiguous and reparation awarded for unreasonable charges resulting therefrom. *Alexander v. S. P. Co.* 306.

Rate on rough iron castings in sacks from Beaver Dam, Wis., to Stockton, Cal., should not exceed fourth-class rate. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550.

Fact that a given article is shipped in same manner as another article considered in determining the comparative reasonableness of a rate. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

## PAPER RATES.

In re Advances on Lumber, 686 (690) ; Flour City S. S. Co. v. L. V. R. R. Co. 179 (186).

## PARCEL RATES.

In re Express Rates, 380 (433).

PARTIES. *See also* COLLECTION OF CHARGES; DIVISION OF THROUGH RATES.

## COMPLAINANTS.

## IN GENERAL.

That a complaining steamship corporation has no vessels and that its stock is not paid in, is no valid objection to its right to obtain a ruling from the Commission as to whether it will be made a party to through routes when it is able to transport. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (186).

## ENTITLED TO DAMAGES.

A state railroad commission is not entitled to damages. *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

Intervenors denied reparation where reparation was not put in issue in original complaint. *R. R. Com. of Oregon v. S. P. Co.* 273 (279).

A consignee who has paid charges based on an unreasonable rate is not entitled to reparation where such charges have been deducted from the shipper's invoice. *Deming Lumber Co. v. S. P. Co.* 598 (599).

Commission merchants who are under obligation to pay freight charges are, on the face of the transaction, the only parties who can maintain a suit for an excessive rate or overcharge. Reparation awarded. *Crutchfield & Woolfolk v. S. P. Co.* 679 (680).

Where a commission merchant who pays the freight in the first instance has settled with his principal who, by the terms of that settlement, has paid the freight charges, such commission merchant is not a proper party to maintain a proceeding for reparation. *Crutchfield & Woolfolk v. S. P. Co.* 679 (680).

## DEFENDANTS.

Carriers which participate in a transportation are necessary parties to any proceeding involving rates over their lines. Proper parties not being joined, complaint dismissed. *Grenada Oil Mill v. I. C. R. R. Co.* 318 (319).

The Commission will not undertake to establish differentials where all the carriers interested are not before it. *Boileau v. P. & L. E. R. R. Co.* 129 (133).

Where only a portion of a combination through rate is attacked, it is not necessary to join as defendants all the carriers that are parties to such rate. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594.

PASSENGER RATES. *See* TICKETS.

## PASSENGERS.

The crude measure that one passenger is regarded as equal to one ton of freight, leads nowhere. In re Express Rates, 380 (426).

## PAYMENT.

Prepayment on all shipments may be demanded by a carrier, but the carrier may within reasonable and nondiscriminatory limits waive its right to prepayment. It can not, however, distinguish in rates between those who prepay and those who do not. In re Express Rates, 380 (399).

Shippers declining to furnish a return address should be required, by proper rules, to prepay express charges. *Id.* 380 (404).

PENALTIES FOR DELAY. *See* DEMURRAGE.

## PENALTY RATES.

New Roads Oil Mill & Mfg. Co. *v.* St. L. I. M. & S. Ry. Co. 167 (168); Memphis Freight Bureau *v.* St. L. & S. F. R. R. Co. 602 (603); Transit case, 340 (357).

PHYSICAL OPERATION. *See also* POLICY OF CARRIER.

A requirement that a route be so changed as to embrace a viaduct owned by a bridge company not subject to the act is a plan of physical operation not within the jurisdiction of the Commission under the facts of this case. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

PIER DELIVERY. *See* DELIVERY.PIPE LINES. *See also* CARRIERS.

The act to regulate commerce impresses the obligations of common carriers upon all pipe lines engaged in the transportation of oil in interstate commerce, even though such pipe lines were built over privately acquired right of way and transport only their own oil. *In re Pipe Lines*, 1.

Certain pipe lines ordered to file with Commission schedules of their rates and charges. *Id.*

PLANT FACILITIES. *See* CARRIERS; INDUSTRIAL ROADS.PLEADING. *See also* ISSUE.

Technical defenses have no place before the Commission and will not be permitted to defeat the broad principles of the act. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (187).

## POINTS OFF LINE.

That a carrier does not directly serve a city is no defense to a charge of undue prejudice where such carrier participates in the carrying trade of that city. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

Where two roads are under a substantially common ownership and control, they are considered as one system, notwithstanding the fact that they may be operated separately, and each is considered as having its rails extended to points directly served by the other. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (111, 117).

A carrier whose rails do not extend to a given city is considered as having its rails extended to such city when it has a trackage right into that city over the rails of another carrier. *Commercial Club of Superior v. G. N. Ry.* 96 (112).

Whether a carrier, who does not control the traffic of a city, can properly be charged with discrimination against that city, not decided. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (226).

It is a defense in this case to a charge of undue prejudice for the carriers to show, among other facts, that none of them serves the point alleged to be unduly preferred, notwithstanding the fact that the rails of one of the carriers actually extend to both cities. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88).

POLICY OF CARRIER. *See also* PHYSICAL OPERATION; COMPETITION.

The Commission is not free to substitute its judgment as to a policy for that of the carrier. *In re Express Rates*, 380 (430).

## PORT DIFFERENTIALS.

Reasonable import and export differentials at Atlantic seaboard ports, prescribed by the Commission. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55; 674. *In re Import Rates*, 78, 678.



**PORT PREFERENCES.**

Constitutional provision against giving a preference to ports of one state over those of another state, discussed and not found applicable to present case. *Chamber of Commerce of New York v. N. Y. & H. R. R. Co.* 55 (60).

**PORT-TO-PORT RATES.**

*Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co* 570 (580)

**POSTING TARIFFS.** *See also* TARIFFS.

Rates provided in tariff not on file with Commission are not legal rates.

*St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (367).

**POST-OFFICE COMPETITION RATE.**

In re *Express Rates*, 380 (400).

**POTENTIAL COMPETITION.** *See* COMPETITION.**PRACTICE AND PROCEDURE.**

The filing by defendant carriers of an application for relief from the operation of section 4 does not preclude a determination by the Commission of a complaint under section 3. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

Fourth section application considered with complaint attacking rates covered by application. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (373).

**PRACTICES.** *See* RULES, REGULATIONS, AND PRACTICES.**PRECEDENTS.** *See also* ESTOPPEL; RES ADJUDICATA.

Commission adheres to conclusions reached in former decision as to reasonableness of rates except in so far as same are modified by present findings of unjust discrimination. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (103).

Cases controlled by decisions in other cases. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (577); *Arlington Heights Fruit Exchange v. S. P. Co.* 671 (672); *Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205 (208).

**PREFERENCES AND PREJUDICES.** *See also* DISCRIMINATION; LONG AND SHORT HAUL; EXPORT AND IMPORT RATES; DAMAGES.**IN GENERAL.**

Cases of alleged undue preference or prejudice must be adjudged on their respective merits. *Casassa v. P. R. R. Co.* 629 (631).

**COMMODITIES.**

Cottonseed and shippers thereof, from Arkansas, Oklahoma, Tennessee, and Mississippi to East St. Louis, Ill., are subjected to undue prejudice by maintaining a lower charge on cottonseed oil; but Commission does not hold that cottonseed should take same rate as cottonseed meal and cake. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 588 (591).

Glucose rate, export and domestic, from Chicago, Ill., to New York found to be discriminatory as compared with rate on corn. *Iowa v. A. C. L. R. R. Co.* 134.

**LOCALITIES.****IN GENERAL.**

Where the rate to an intermediate point is not shown to be unreasonable in itself and there is no competition between such point and a farther-distance point enjoying a lower rate from the same point of origin, section 3 is not violated. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

There may be a violation of section 3 for reasons other than those covered by section 4. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

## IN GENERAL—Continued.

There may be a violation of section 4 under a state of facts not constituting a violation of section 3. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

## DEFENSES.

## Competition.

It is no defense to a charge of undue prejudice against one point in favor of others to urge that competition exists at the favored points when similar conditions obtain at the point discriminated against. *Mfrs. & Merchants Asso. v. A. & A. R. R. Co.* 331 (336); *In re Advances on Barley*, 664 (670); *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (377); *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

Competition found to justify rate adjustment alleged to be unjustly discriminatory as between localities. *Johnson & Son v. C. & O. Ry. Co.* 698 (700).

A carrier which establishes a low rate in North Dakota in order to meet the competition of a Canadian line is under no obligation to adopt the same rates for the same distance in other states where the same competition is not present. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (103).

Competition compelling low rates to one point is a defense to a charge of undue prejudice in not maintaining as low rates to another point not affected by such competitive conditions. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125 (128).

Where the carriers controlling the rate adjustment are justified in maintaining lower rates to and from Baltimore and Philadelphia than to and from New York, other carriers participating in this traffic being compelled to meet these rates, may lawfully charge higher rates to and from New York than to and from Baltimore and Philadelphia. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (75).

A carrier is justified in maintaining at cities vitally affected by all-rail and rail-and-lake competition lower rates than at a city not enjoying such competition. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125.

Absence of water service at one point and the existence of water service at others create a dissimilarity of circumstances justifying a higher rate at the point not served by water carriers. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.

Railroad competition in this case held not to be sufficient to justify higher rates at an intermediate point. *Bowling Green Business Men v. L. & N. R. R. Co.* 228.

Where a carrier has nullified water competition at one city through a community of interest with water carriers, it is not justified in granting a lower rate at related points on the ground that water competition at such other points compels a lower rate. *Bowling Green Business Men v. L. & N. R. R. Co.* 228.

Water competition found to create a dissimilarity of circumstances that negated a charge of undue prejudice. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88).

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

## DEFENSES—Continued.

## POINTS OFF LINE.

Whether a carrier who does not control the traffic of a city can properly be charged with discrimination against that city, not decided. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (226).

Where a complainant in his petition includes all the carriers who may be responsible for a given rate which is alleged to be discriminatory, and some of the carriers do not appear, it is no defense for the carriers that do appear to say that they have no voice in making the rate attacked. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (87).

In this case it is a defense to a charge of undue prejudice for the carriers appearing to show, among other facts, that none of them serves the point alleged to be unduly preferred, notwithstanding the fact that the rails of one of them actually extend to both cities. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (88).

That a carrier does not directly serve a city is no defense to a charge of undue discrimination where such carrier participates in the carrying trade of that city. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (75).

A carrier whose rails do not extend to a given city is considered as having its rails extended to such city when it has a trackage right over the rails of another carrier to that city. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (112).

Where two roads are under a substantially common ownership and control they are considered as one system, notwithstanding the fact that they may be operated separately, and each is considered as having its rails extended to points directly served by the other. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (111, 117).

The Chicago Great Northern does not reach, has no interest in, and owes no duty to Duluth. Any rates to Duluth in which it may participate are purely competitive and beyond its control. *Commercial Club of Superior v. G. N. Ry. Co.* 92 (112).

## COMPETITIVE POINTS.

That a city is not shown to be an active competitor of other cities which, though similarly circumstanced, enjoy more favorable rates, is no answer to a charge of undue prejudice in this case. *Santa Rosa Traffic Asso. v. S. P. Co.* 46.

Where there is no competition between an intermediate and a farther-distance point, and the rate to the intermediate point is not shown to be unreasonable, there is no violation of section 3, though the farther-distance point enjoys a lower rate. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

## RATE ADJUSTMENTS.

That a rate adjustment complained of is a very old one is no defense to the maintenance of rates that unduly discriminate against a given point. *Mfrs. & Merchants Asso. v. A. & A. R. R. Co.* 331 (337).

That Decatur rates are made with relation to Nashville rather than with relation to Memphis does not mean that Decatur could not be discriminated against in favor of Memphis. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (86).



## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

## DEFENSES—Continued.

## FINANCIAL CONDITION.

The financial inability of a defendant is no answer to a charge of undue preference. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

## APPLICATION FOR RELIEF.

The filing by a carrier of an application for relief from section 4 does not preclude a determination of a complaint under section 3 involving the same general territory. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

## ORDERS.

An order to cease and desist from an unjust discrimination operates in the alternative. The competing points must be put on a parity. Where the rates to one point are unduly low no valid objection can be found to the removal of the discrimination by an increase of such rates. *In re Advances of Lumber*, 686 (691).

## SPECIFIC INSTANCES.

Albert Lea, Minn., is not unduly prejudiced by exaction of present differential over the twin cities on traffic from the east. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125.

Battle Creek, Mich., is not unduly prejudiced by the maintenance of a lower rate to Detroit, Mich., on traffic from New Orleans, La. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

Boston, Ga., is unduly prejudiced on traffic from New York, New Orleans, La., and Ohio River crossings, as compared with Quitman and Thomasville, Ga., by reason of the existing differential adjustment. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

Bowling Green, Ky., is unduly prejudiced as compared with Nashville and Clarksville, Tenn.; Evansville, Ind.; and Louisville, Ky. *Bowling Green Business Men v. L. & N. R. R. Co.* 228.

Carondelet, Mo., is not unduly prejudiced by the fact that dual rates on coke are maintained to Chicago, Ill., from the same points of origin, while Carondelet enjoys only the open rate. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360.

Decatur, Ala., is unjustly discriminated against on traffic to western markets as compared with Memphis, Tenn. The adjustment to southeastern and central markets not found unlawful. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81.

Escanaba, Mich., is not unduly prejudiced in that it does not enjoy the same rates as other points, the absence of water service at Escanaba producing a dissimilarity of circumstances. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.

Gill, W. Va., a branch-line point, found to be unduly discriminated against as compared with neighboring branch-line points on traffic to central freight association territory; rates from Gill, Meeks, and Morehead, which are 3 cents higher than their main-line junctions, not found discriminatory; and the charging of slightly higher rates from Barboursville, upon which Gill bases, than from Big Sandy Junction or Ashland, upon which Meeks and Morehead bases, is not unlawful. *Johnson & Son v. C. & O. Ry. Co.* 698.

Memphis, Tenn., held to be unduly prejudiced by the enforcement there of stricter transit rules than at other designated markets. This should be corrected by adjusting the rules at such other points. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (613).

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

## SPECIFIC INSTANCES—Continued.

Memphis, Tenn., is at a disadvantage by being deprived of reshipping rates such as are accorded St. Louis, Mo., and other markets. *Memphis Grain & Hay Exchange v. St. L. & S. F. R. R. Co.* 609 (616).

Minneapolis, Minn., is subjected to undue prejudice in favor of Chicago, Ill., by proposed advanced rates on barley from California to Minneapolis via Omaha, Nebr. *In re Advances on Barley*, 664.

Minneapolis and St. Paul, Minn., and other points in that territory held not to be unduly prejudiced by advance in rates on apples from southwestern Missouri River points. *In re Advances on Apples*, 38.

Monticello, Ark., is subjected to undue prejudice by the adjustment of rates on cottonseed meal to Louisiana. *Davis v. St. L. I. M. & S. Ry. Co.* 309.

Morristown, Tenn., and other points intermediate Bristol, Tenn.-Va., and Knoxville, Tenn., on direct line of Southern Railway, are entitled to rates from New York City and related points not higher than rates contemporaneously in effect to Knoxville; and the glassware rate from Pittsburgh, Pa., and Wheeling, W. Va., to Morristown should not exceed the combination on Bristol. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372.

Mount Vernon division stations, Va., are entitled to commutation rates to and from Washington, D. C., so long as such rates are provided for travel from other stations under similar circumstances. *Bitzer v. W.-Va. Ry. Co.* 255 (257).

New Albany, Ind., is unduly prejudiced by the failure of the rail carriers to absorb a bridge charge on traffic to that point, while absorbing such charges on traffic to Louisville, Ky., on the opposite bank of the river and at other river points. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (339).

New Roads, La., is unduly prejudiced in the matter of cottonseed rates from Arkansas. *New Roads Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167 (169).

New York, N. Y., is entitled to the same export rates on grain as Boston; reasonable relation of rates and differentials among North Atlantic ports fixed for import and export traffic. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55; 674.

Oklahoma points are at a disadvantage as compared with distributing cities in the north of Texas on traffic from the Atlantic seaboard in that the Texas shipper may take possession of his traffic at Galveston and obtain the water rate to Galveston and the Texas state rate from Galveston, although the shipment is an interstate one. Under a Supreme Court decision a movement which is in fact interstate may be converted into two local movements. The discrimination against Oklahoma can not be pronounced unlawful. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (584).

Omaha, Nebr., is unjustly discriminated against as compared with Minneapolis, Minn., under existing adjustment of grain rates from South Dakota. *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122.

St. Louis, Mo., is not unduly discriminated against by reason of fact that carriers advanced lumber rate to St. Louis and reduced rates on lumber of East St. Louis, the change being made to place both cities upon a parity. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (226).

## PREFERENCES AND PREJUDICES—Continued.

## LOCALITIES—Continued.

## SPECIFIC INSTANCES—Continued.

Sandusky, Ohio, denied retroactive application of a transit privilege which had been extended to other points and which was subsequently extended to Sandusky after certain shipments had moved. *Rosenbaum Bros. v. B. & O. R. R. Co.* 287.

Santa Rosa, Cal., is subjected to undue prejudice by reason of carriers' refusal to extend terminal rates to such point while extending such rates to Santa Clara, Cal., and other points. *Santa Rosa Traffic Asso. v. S. P. Co.* 46.

Superior, Wis., and other points held to be unduly prejudiced by existing grain-rate adjustment from producing territories. Reasonable adjustment fixed by Commission. *Commercial Club of Superior v. G. N. Ry. Co.* 96.

Union Bridge, Md., is unduly prejudiced and Security, Md., is unduly preferred under cement rates to Virginia and West Virginia points. *In re Advances on Cement*, 290.

Utah mines held to be unjustly discriminated against in coal rates as compared with Rock Springs mines. *Consolidated Coal Co. v. A. T. & S. F. Ry. Co.* 213.

Watertown, Wis., is not entitled to be placed on an equality with Chicago, Ill., as regards rates on rye from Minneapolis, Minn., to the east, by the elimination of a transit charge. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (596).

Express rates held to be discriminatory as between certain localities. *In re Express Rates*, 380.

## PERSONS.

Placing an embargo against cars being sent off carrier's own line held unlawful. *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 618.

Merchants of Washington, D. C., located on Fourteenth street N. W., between Florida avenue and Park Road, are subjected to undue prejudice by being compelled to pay a drayage charge, while merchants located in Georgetown, D. C., are given free pick-up and delivery service. *Casassa v. P. R. R. Co.* 629.

Refusal of defendant to switch to a track, not its own team track, a consignment received from a connecting line, held to be unlawful. *R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292.

Refusal to switch to its own team track a car received from a connecting line held not unlawful, notwithstanding the fact that, through mistake, defendant had on several occasions performed such service for others. *R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292.

Complainant lumber company held to be entitled to through routes and joint rates in connection with its industrial short line, from McCloud, Cal., to eastern destination. *McCloud River Lumber Co. v. S. P. Co.* 89.

Refusal of defendants to absorb switching charges of a delivering belt line upon shipments delivered in Dodson, a suburb of Kansas, to the extent of their general switching absorption in Kansas, found to be unduly discriminatory. Damages awarded. *Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205.

PREPAYMENT. See PAYMENT.



# **PRESUMPTION.**

No presumption of unreasonableness attaches to a joint through rate applicable via one route because of the fact that the intermediate rates via another route would make a lower rate. *Paine Lumber Co. v. C. C. C. & St. L. Ry. Co.* 626.

# **PRIMARY GRAIN MARKET.**

Commercial Club of Superior *v. G. N. Ry. Co.* 96 (98).

# **PRIVATE TRACKS. See DEMURRAGE.**

# **PRIVILEGES. See TRANSIT PRIVILEGES.**

# **PRODUCERS.**

Interests of producers must be considered by Commission. Commercial Club of Superior *v. G. N. Ry. Co.* 96 (102).

# **PROPORTIONAL RATES. See also RESHIPING; ORIGIN.**

## **DEFINITION.**

A proportional rate is a rate which applies to a part of through transportation which is entirely within the jurisdiction of the Commission; the balance of the transportation to which the proportional rate applies must be under a rate filed with the Commission. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (155).

## **JURISDICTION.**

Whether the Commission has power to initiate from Galveston to Oklahoma points a proportional rate applicable to traffic from the Atlantic seaboard, which is lower than a reasonable local rate, is not determined. An attempt to do so in the present case would be neither wise nor proper. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (578).

## **IN GENERAL.**

To a certain extent the Commission recognizes the propriety of proportional rates, which differ from corresponding local rates, and has acted upon those rates when established by the carrier. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (578).

Tariffs containing basing or proportional rates must specify the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of tariffs in which bases can be found. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (155).

Proportional rates established by carrier to allow Memphis lumber dealers to compete and to induce movement via certain route. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81 (84).

Proportional rates considered. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (596); *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (368); *Flour City S. S. Co. v. L. V. R. R. Co.* 179; *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552; *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (13); *In re Advances on Lumber*, 686 (688); *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (141); *McCloud River Lumber Co. v. S. P. Co.* 89 (90); *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372 (376); *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125 (127); *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (614).

# **PROPRIETY OF ADVANCE. See also ADVANCE IN RATES.**

*In re Advances on Fruits and Vegetables*, 164 (166); *In re Advances on Barley*, 664 (669); *In re Advances on Coal*, 43.

**PUBLIC INTEREST.**

The public interest is subserved by enabling small mills at small points to exist and reach markets on a basis of relative equality with large mills at large points. *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552.

Public interest in coal rates. *Boileau v. P. & L. E. R. R. Co.* 129 (131); *Pittsburgh Vein Operators of Ohio v. P. Co.* 280 (283).

**QUOTATION OF RATE.** *See* **LEGAL RATES.**

**RAIL-AND-WATER-RATES.**

Rail-and-water-rates considered. *Commercial Club of Superior v. G. N. Ry. Co.* 96; *Flour City S. S. Co. v. L. V. R. R. Co.* 179; *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (571); *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125 (127); *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55, 674; *In re Import Rates*, 78, 678; *Mayor and Council of Boston v. A. C. L. R. R. Co.* 50 (52); *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.

**"RAIL-LAKE-AND-RAIL."**

Defined. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (13).

**"RAILROAD."**

Defined. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (25).

**RAILROAD COMPETITION.** *See* **COMPETITION**; **PREFERENCES AND PREJUDICES.**

**RAILROAD CONSIGNEE.**

*Lathrop, Shea, Henwood Co. v. L. V. R. R. Co.* 622.

**RAND-MCNALLY ATLAS.**

Is not an official publication of carriers and can not control rates. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (154).

**RATE ADJUSTMENT.** *See* **DISTURBANCE OF ADJUSTMENT**; **PREFERENCES AND PREJUDICES**; **RELATIVE RATES**; **REASONABLE RATES.**

**RATES.** *See* **ADVANCE IN RATES**; **BLANKET RATES**; **CLASSIFICATION**; **DISCRIMINATION**; **EXPORT AND IMPORT RATES**; **EXPRESS COMPANIES**; **GRADED RATES**; **GROUP RATES**; **INDUSTRIAL RATES**; **JURISDICTION OF COMMISSION**; **LONG AND SHORT HAUL**; **LEGAL RATES**; **MEASURE OF RATE**; **MINIMUM RATES**; **ORIGIN**; **PAPER RATES**; **PENALTY RATES**; **PIPE LINES**; **PREFERENCES AND PREJUDICES**; **PROPORTIONAL RATES**; **REASONABLE CHARGES**; **REASONABLE RATES**; **RESHIPPING**; **STREET RAILROADS**; **THROUGH RATES**; **TICKETS**; **USE**; **VOLUNTARY RATE**; **WATER CARRIERS.**

**REASONABLE CHARGES.**

Minimum weight held unreasonable and damages awarded for unreasonable charges resulting. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

Damages awarded for additional charges resulting from ambiguous tariff provision governing packing. *Alexander v. S. P. Co.* 306.

Additional charges accruing on substituted article shipped to take place of a similar article which had been lost in transit through no fault of shipper, found unlawful. *Larkin Co. v. E. & W. T. Co.* 645.

Refrigeration charges held unreasonable. *Jackson & Perkins v. S. P. Co.* 323; *Crutchfield & Woolfolk v. S. P. Co.* 651 (653); *In re Advances on Fruits and Vegetables*, 164.

**REASONABLE RATES.** *See also* **REASONABLE CHARGES**; **PREFERENCES AND PREJUDICES**; **LONG AND SHORT HAUL**; **DISCRIMINATION**; **LEGAL RATES**; **TICKETS**; **MEASURE OF RATE.**

**IN GENERAL.**

The carrier is entitled to reasonable compensation and the shipper to a reasonable rate for the service performed. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (615).

## REASONABLE RATES—Continued.

## IN GENERAL—Continued.

Where rates are based upon a classification of commodities and graded to each particular point of destination, the only requirement is that such rates be in and of themselves just and reasonable. *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

## ABSOLUTE REASONABLENESS.

Class rates from Galveston, Tex., to Wichita, Kans., and Oklahoma City, Okla., found unreasonable; but those from Atlantic seaboard to Wichita, Denver, Colo., and Oklahoma not found unreasonable; and reasonableness of through rate from Atlantic seaboard to Texas points not passed upon. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* 570.

Class rates to and from New York not found unreasonable per se. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (60).

Coal (soft) rate advance from Springfield and southern Illinois mines to Kansas and Nebraska found unreasonable. *In re Advances on Coal*, 43.

Coke rate from Page and Ansted, W. Va., and Glassport, Pa., to Carondelet, Mo., not found unreasonable. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360.

Cotton waste rate from Augusta, Ga., to Clinton, Ariz., not found unreasonable. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

Cottonseed rate to East St. Louis, Ill., from the Fayette-Okmulgee branch, not found unreasonable. *East St. Louis Cotton Oil Co. v. A. T. & S. F. R. R. Co.* 588 (592).

Cotton-factory sweepings rate from Lindale, Ga., to Paducah, Ky., held unreasonable. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

Express rates found unreasonable. *In re Express Rates*, 380.

Grain rates from South Dakota to Omaha, Nebr., not found unreasonable per se. *Omaha Grain Exchange v. C. M. & St. P. Ry. Co.* 122 (124).

Lime rate advance, Texas to New Orleans, La., found unreasonable. *In re Advances on Lime*, 170.

Lumber rate, El Paso, Tex., to Las Cruces, N. Mex., held unreasonable. *Bascom-Porter Co. v. A. T. & S. F. Ry. Co.* 297.

Lumber (pine) rate advance, Deming, N. Mex., from Louisiana and Texas, held unreasonable. *Deming Lumber Co. v. S. P. Co.* 598.

Lumber (yellow pine) rate from Arkansas, Louisiana, Mississippi, and Texas to Sioux City, Iowa, held unreasonable. *Sioux City Commercial Club v. A. & S. R. R. Co.* 177.

COMPARATIVE REASONABLENESS. *See also* COMPARATIVE RATES.

Bottle-washing machines rate, from Lynn, Mass., to San Francisco, Cal., held unreasonable to extent that it exceeded rate on tub bottle-washing machines. *Western Traffic Asso. v. B. & M. R. R.* 592 (593).

Castings (rough iron, in sacks) rate held unreasonable so far as it exceeded fourth-class rate. *Central California Traction Co. v. C. M. & St. P. Ry. Co.* 550.

Coal rate applicable to fuel when loaded in open cars not found unreasonable as compared with lower joint rate applicable to coal loaded in box or stock cars. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624.

Coal screenings (soft) rate, from Chicago, Ill., to Platteville, Wis., not found unreasonable as compared with rate on hard-coal screenings. *Chaffin Coal Co. v. C. M. & St. P. Ry. Co.* 321.



## REASONABLE RATES—Continued.

## COMPARATIVE REASONABLENESS—Continued.

Cottonseed is entitled to same rate to East St. Louis, Ill., from Arkansas and other points as cottonseed oil; whether it is entitled to same rate as cottonseed meal and cake not decided. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 588 (591).

Electrotype plate rates, from Cincinnati, Ohio, to San Francisco, Cal., found unreasonable. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.*, 557.

Excelsior in carloads, from St. Paul, Minn., to Chicago, Ill., St. Louis, Mo., and Omaha, Nebr., is entitled to same rate as flax tow. *Keogh v. C. B. & Q. R. R. Co.* 606.

Glucose rate, export and domestic, from Chicago, Ill., to New York, found unreasonable as compared with rate on corn. *Iowa v. A. C. L. R. R. Co.* 134.

Lime-sulphur solution rate, from Pullman Junction, Ill., to Portland, Oreg., found unreasonable to extent that it exceeded rate on liquid sheep dip. *Hardie Mfg. Co. v. O. R. R. & N. Co.* 545 (546).

Printographs, writerpresses, planotypes, and addressing machines, from La Crosse, Wis., and Chicago, Ill., to Portland, Oreg., are entitled to as low a rate as multigraphs. *Pacific Stationery & Printing Co. v. O.-W. R. R. & N. Co.* 299 (300).

Rough iron castings. *See* Castings.

Soft-coal screenings. *See* Screenings.

Watermelon and cantaloupe rates from the southeast to markets north of Potomac River and east of Buffalo-Pittsburgh line not found unreasonable; exact relation which ought to exist between these two commodities not determined. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560.

RELATIVE REASONABLENESS. *See also* RELATIVE RATES.

Apple rate advance from southwestern Missouri River points to Minneapolis, St. Paul, Minn., and other points not found unreasonable. *In re Advances on Apples*, 38.

Barley rate advance from California to Minneapolis, Minn., via Omaha, Nebr., not shown to be reasonable and nondiscriminatory and is therefore condemned. *In re Advances on Barley*, 664.

Barrel staves and headings rate from Decatur, Ala., to Gulf markets and other destinations, while it appears to be too high in comparison with other rates, is not found unreasonable. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81.

Canned-goods rate from Magnolia, Ark., to Fort Smith, Ark., moving interstate, found unreasonable. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648.

Cement rate advance, Kansas gas belt to Missouri, not found unreasonable. *In re Advances on Cement*, 209.

Cement rate, Ada, Okla., to Shreveport, La., held unreasonable. *Oklahoma Portland Cement Co. v. M. K. & T. Ry. Co.* 158.

Cheese rate, Plymouth, Wis., to El Paso, Tex., not found relatively unreasonable. *Lesinsky Co. v. A. T. & S. F. Ry. Co.* 620.

Class rate from Portland, Oreg., to Willamette Valley found unreasonable. *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

Class and commodity rates from New York to Morristown, Tenn., should not exceed rates contemporaneously in effect to Knoxville, Tenn. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372.

## REASONABLE RATES—Continued.

## RELATIVE REASONABLENESS—Continued.

- Class and commodity rates from trunk line and c. f. a. territory to Escanaba, Mich., not found unreasonable. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11.
- Coal (bituminous) rate from Pittsburgh vein No. 8 to Lake Erie ports, when for transshipment beyond state, held unreasonable. *Pittsburgh Vein Operators of Ohio v. P. Co.* 280.
- Coal (anthracite) rate from Taylor, Pa., to Hoboken, N. J., found unreasonable. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140.
- Coal (bituminous) rate from Herrin, Ill., and Wheatcroft and Sturgis, Ky., to Grenada, Miss., found unreasonable; rates from Piper Mines, Ala., not passed upon. *Grenada Oil Mill v. I. C. R. R. Co.* 318.
- Coal (lake-cargo) rate from Hocking district, Ohio, to docks at Toledo, Ohio, when for transshipment beyond state, not held unreasonable. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.
- Coal rate from New Albany, Ind., to St. Louis and East St. Louis not found unreasonable. *Slider v. S. Ry. Co.* 312.
- Cooperage rate advance from St. Louis, Mo., and other points to Utah, not found unreasonable. In re *Advances on Cooperage*, 656.
- Cottonseed from Missouri to East St. Louis, Ill., not found to be entitled to same rate as to St. Louis, Mo. *East St. Louis Cotton Oil Co. v. St. L. & S. F. R. R. Co.* 588 (592).
- Cottonseed rates, New Roads, La., from Arkansas, found unreasonable. *New Roads Oil Mill & Mfg. Co. v. St. L. I. M. & S. Ry. Co.* 167.
- Cottonseed meal rate, from Monticello, Ark., to Louisiana, held unreasonable. *Davis v. St. L. I. M. & S. Ry. Co.* 309.
- Cottonseed oil rate from producing points to Kansas City and other points, not found unreasonable. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 327.
- Cotton-compress machinery rate, New Orleans, La., to Marshall, Tex., held unreasonable. *Loeb v. T. & P. Ry. Co.* 304.
- Door rate from Cleveland, Ohio, to Oshkosh, Wis., not found unreasonable as compared with rate via another route. *Paine Lumber Co. v. C. C. C. & St. L. Ry. Co.* 626.
- Express rates found unreasonable. In re *Express Rates*, 380.
- Flour rates from Minneapolis, Minn., need not necessarily be the same as from Duluth, Minn. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (105).
- Fruit and vegetable refrigeration rate advance to New York held relatively unreasonable; but advances to Boston and other points permitted without determining reasonableness thereof. In re *Advances on Fruit and Vegetables*, 164.
- Glassware rate to Morristown, Tenn., from Pittsburgh, Pa., and Wheeling, W. Va., should not exceed combination on Bristol, Tenn.; other rates attacked not found unreasonable. *Board of Trade of Morristown v. A. C. L. R. R. Co.* 372.
- Gravel rate from New Albany, Ind., to Louisville, Ky., not found unreasonable. *Slider v. S. Ry. Co.* 312.
- Gravel rate advance, from Wisconsin to Chicago, Ill., found unreasonable. In re *Advances on Sand and Gravel*, 249.
- Lemon rate from California to Oregon, Washington, and Idaho found unreasonable. *Arlington Heights Fruit Exchange v. S. P. Co.* 671.

## REASONABLE RATES—Continued.

## RELATIVE REASONABLENESS—Continued.

Lumber rate to St. Louis, Mo., was advanced while the rate to East St. Louis was reduced, in order to place the two towns on a parity. Advance not condemned. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220.

Lumber rate advance from the southeast to Cairo, Ill., proper, and to St. Louis, Mo., not found unreasonable. *In re Advances on Lumber*, 686.

Lumber rate from Atlanta, Wis., to interstate destinations, should not exceed rate from Bruce, Wis. *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634 (637).

Oranges from Jacksonville, Fla., should take same rates to Bowling Green, Ky., as to Louisville, Ky. *Bowling Green Business Men v. L. & N. R. R. Co.* 228 (243).

Passenger rates between Washington, D. C., and Virginia points, found unreasonable. *Bitzer v. W.-V. Ry. Co.* 255..

Petroleum and petroleum products rate from Coffeyville, Kans., to Hastings, Nebr., not found unreasonable; but rate to Sedalia, Mo., found unreasonable. *National Refining Co. v. M. P. Ry. Co.* 315.

Sand rate advance, from Wisconsin to Chicago, Ill., held unreasonable. *In re Advances on Sand and Gravel*, 249.

✓ Sand rate from New Albany, Ind., to Louisville, Ky., not found unreasonable. *Slider v. S. Ry. Co.* 312.

Sugar rate from New Orleans, La., to Battle Creek, Mich., not found unreasonable. *Kellogg Toasted Corn Flake Co. v. M. C. R. R. Co.* 604 (605).

Vegetable refrigeration rate advance to New York and other points, found relatively unreasonable, but advances permitted to Boston and other specified points. *In re Advances on Fruit and Vegetables*, 164.

Watermelon and cantaloupe rate from the southeast to trunk line territory not found to be out of adjustment. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560.

## REBATES.

Practice of giving rebates, which are concealed by indirection in express tariffs, must cease. *In re Express Rates*, 380.

RECEIPTS. *See also* LIABILITY AND LIMITED LIABILITY.

The law requires carriers to give a receipt for packages received. *In re Express Rates*, 380 (395).

Unreasonable conditions and limitations in express receipts discussed. *Id.* 380 (395).

Rule governing procurement and return to consignor of consignee's receipt and providing for a charge of 10 cents for this service by the company, not found unreasonable. *Id.* 380 (410).

RECIPROCAL SWITCHING. *See* SWITCHING.RECONSIGNMENT. *See also* RESHIPING.

Express rules 26 and 27, covering change of destination in transit and reconsignments, not found unreasonable. *In re Express Rates*, 380 (412).

RECORDS. *See also* TRANSIT PRIVILEGES.

Records of transit houses, in so far as they are subject to tariff rules, are railroad records within the meaning of section 20 of the act. *Transit case*, 340 (351).

## REDUCTION.

The mere fact that a rate was voluntarily reduced by the carrier is of little value in determining its reasonableness. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (597).



**REDUCTION—Continued.**

Rate held unreasonable to extent that it exceeded subsequently established rate. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264.

Unjust discrimination as between localities resulted from reducing rates to one city and not reducing it to another. *In re Advances on Cement*, 290.

**REFRIGERATION.**

Proposed advances on fruit and vegetables under refrigeration to New York and other points found unreasonable; but advanced rates permitted to Boston and other designated points. *In re Advances on Fruits and Vegetables*, 164.

Refrigeration charge for single icing of nursery stock from California to Newark, N. Y., held unreasonable to extent that it exceeded \$40 per car. Damages awarded. *Jackson & Perkins Co. v. S. P. Co.* 323.

Where a refrigeration service, as in this case, is an entirety and wholly under the control of a carrier, which determines when ice shall be supplied and in what quantities, the amount depending upon the manner in which the carrier itself handles the car, the refrigeration charge should be a gross sum, and shippers should not be required to pay for the ice consumed in reicing. *Crutchfield & Woolfolk v. S. P. Co.* 651 (653).

Whether a carrier may under any circumstances properly charge shippers for ice actually consumed in the process of refrigeration, not decided. *Id.* 651 (653).

Carriers may protect themselves against undue delay upon part of shippers in loading cars after they have been iced and placed for loading, by a reasonable charge in the nature of a demurrage charge. *Id.* 651 (653).

Binding effect upon carrier of instructions in bill of lading as to icing, discussed. *Jackson & Perkins Co. v. S. P. Co.* 323.

**REFRIGERATOR CARS.** *See* DEMURRAGE.

**REFUND.** *See also* DAMAGES.

After delivery of an express shipment and collection of charges thereon there should be no refund of charges. *In re Express Rates*, 380 (408).

**REFUSAL TO TRANSPORT.** *See* EMBARGO.

**REHEARING.**

Application for modification of order denied. *Boileau v. P. & L. E. R. R. Co.* 129.

**REICING.** *See* REFRIGERATION.

**RELATIVE RATES.** *See also* PREFERENCES AND PREJUDICES; REASONABLE RATES.

Because a rate is reasonable in and of itself it does not follow that it is lawful; rates are often so related to each other that to change one without a corresponding change in the other works an unjust discrimination. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (224).

While comparisons with rates to other points are pertinent, it is necessary to take into consideration other factors than rates and distances. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648 (649).

In the absence of evidence bearing on the specific transaction a comparison of the rates under consideration with other rates prescribed by the Commission in the same general section of the country is helpful in judging of the propriety of an advance. *In re Advances on Fruits and Vegetables*, 164 (166).

No presumption of unreasonableness attaches to a joint rate applicable over one route which is higher than the combination of locals via another route. *Paine Lumber Co. v. C. C. C. & St. L. Ry. Co.* 626.

## RELATIVE RATES—Continued.

The accidental existence of a low rate on a given article at one point ought not to compel an unreasonable relation of rates at all other points. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

Where the unreasonableness of a rate per se is not put in issue by a complaint the Commission will not hold it unreasonable simply because it appears too high by comparison with rates from other points. *Holland Blow Stave Co. v. A. C. L. R. R. Co.* 81.

The interests of Duluth and Superior are practically identical, and what is said as to the reasonableness of rates at one place applies with equal force at the other. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (103).

Express rates have no fixed relation to freight rates; nor is there any relation between the carriage of a passenger and the carriage of dead freight. In re Express Rates, 380 (426).

From Galveston to Denver rates are slightly lower than from Chicago to Denver and materially lower than those from the Missouri River to Salt Lake City. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (577).

Chicago is entitled to a lower rate to Colorado common points than is Galveston because of a difference in transportation conditions. *Id.* 570 (576).

From the Missouri River to Utah points the distance and the transportation conditions are approximately the same as from Galveston to Denver. *Id.* 570 (576).

From Galveston to Wichita transportation conditions are substantially the same as from St. Louis to Texas common points. *Id.* 570 (577).

REPARATION. *See* DAMAGES.

RES ADJUDICATA. *See also* PRECEDENTS; ESTOPPEL.

While commission is not bound by the doctrine of stare decisis or res adjudicata, a decision recently announced must be given full weight in the determination of the reasonableness per se of rates now in controversy. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (101).

The Commission is not precluded by what was said in a former case in which the question now involved was not directly presented. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (101).

The Commission is concluded by decision in prior case unless it was founded on error or on conditions that have since undergone change. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (188).

Conclusions herein announced as to the reasonableness of rates are without prejudice to the right of shippers to attack as unreasonable or discriminatory the rates so prescribed. In re Advances on Lime, 170 (172).

It must be taken as the conclusive opinion of the Commission that twin-city rates are directly and vitally affected by rail-lake-and-rail and all-rail competition. *Business Men's League of Albert Lea v. B. & O. R. R. Co.* 125.

RESHIPPING. *See also* PROPORTIONAL RATES.

Under a decision of the United States Supreme Court a movement which is interstate in fact may be converted into two local movements by an intervening possession and thus the interstate rate may be defeated. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (585).

Memphis, Tenn., is subject to a disadvantage by being deprived of reshipping rates such as are accorded at St. Louis and other markets. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (616).

Reshipping rates, discussed. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (595).



## RESTORATION OF RATE.

Former joint arrangements between trunk lines and industrial lines required to be restored. *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639.

RESTRAINT OF TRADE. *See* MONOPOLIES.

RESTRICTED RATES. *See* USE.

RETROACTIVE. *See* TRANSIT PRIVILEGES.

RETURN OF CARS. *See* EMPTY CARS; EMBARGO.

## RETURNED SHIPMENTS.

Where a consignor orders the return of a shipment after its delivery, charges paid by the consignee must not be refunded. *In re Express Rates*, 380 (408).

The weight basis of assessing charges on returned shipments should be the same as on shipments forwarded. *Id.* 380 (408).

Express tariffs should provide that undelivered shipments originally forwarded by express may, by shipper's order, be returned or forwarded by freight, under the conditions herein prescribed. *Id.* 380 (408).

Express tariffs should provide that shipments forwarded by express may be returned by mail when the value of the shipment does not exceed \$25, provided the order to do so is accompanied by necessary postage and postal registration fees. Ten cents would be a reasonable charge for the company to make for this service. *Id.* 380 (408).

## REVENUE.

## IN GENERAL.

The Commission can not be unmindful of the serious effect upon the revenues of the carriers of the reductions herein proposed. *Anadarko Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 327 (329).

The earnings of the express companies can not be used as a basis for fixing rates. *In re Express Rates*, 380 (423).

Financial inability of carrier is no answer to a charge of undue prejudice. *Mayor & Council of Boston v. A. C. L. R. R. Co.* 50.

## CAR EARNINGS.

Car earnings alone are not an absolutely correct test of the reasonableness of rates. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

## TON-PER-MILE EARNINGS.

Ton-per-mile earnings alone are not an absolutely correct test of reasonableness; a combination of both ton-mile and car earnings is a more correct test than either of those factors alone. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (566).

Comparisons of ton-mile revenues are frequently resorted to by the Commission. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (142).

On no traffic, except it be lumber, are earnings per ton per mile more helpful than on grain; but the consideration given to such earnings must be in a logical and nondiscriminatory way. *In re Advances on Barley*, 664 (666).

Earnings of slightly over 6½ mills per ton per mile on lumber for a distance of 565 miles not found excessive. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220 (223).

Rates per ton per mile are unquestionably helpful, but if they are applied arbitrarily on traffic from the Pacific coast, using the Chicago rate as a basis, there would be a serious derangement in the present rate structures. *In re Advances on Barley*, 664 (670).

While earnings of 4.28 mills per ton per mile on any kind of traffic can not be regarded as high, rates are to be found where the hauls are short



## REVENUE—Continued.

## TON-PER-MILE EARNINGS—Continued.

under which even lower earnings are made. In re Advances on Sand and Gravel, 249 (252).

Ton-mile earnings considered. In re Advances on Lumber, 686 (691).

## RIGHT OF WAY.

A pipe line is not impressed with the obligations of a common carrier merely because it uses for right of way purposes either a public highway or the right of way of a common-carrier railroad. The act to regulate commerce makes all pipe lines engaged in the interstate transportation of oil common carriers, even though such lines were built over privately acquired rights of way. In re Pipe Lines, 1.

## RISK.

Risk considered in determining reasonableness of rate. Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co. 557 (558).

ROUND-TRIP TICKETS. *See* TICKETS.ROUTES. *See also* ROUTING; MISROUTING; THROUGH ROUTES.

Complaint seeking the establishment of routing for interstate electric passenger cars over a viaduct owned by a bridge company which is not a common carrier subject to the act, dismissed for want of jurisdiction. Kansas City v. K. C. V. & T. Ry. Co. 22.

No presumption of unreasonableness attaches to a joint through rate via one route because the intermediate rates via another route make a lower charge. Paine Lumber Co. v. C. C. C. & St. L. Ry. Co. 626.

An adjustment that accords lower rates for a shorter route is not unnatural. R. R. Com. of Oregon v. S. P. Co. 273 (277).

ROUTING. *See also* ROUTES; MISROUTING; THROUGH ROUTES.

The law recognizes the right of the shipper to dictate the intermediate routing of his shipments over available through routes. Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co. 55 (76).

The shipper frequently has an interest in the route his shipment shall take, and it is not fair to compel him to send traffic by a route involving a material and unnecessary delay. In re Advances on Coal, 43 (44).

The consignor has the right to indicate in writing by what joint through route his express shipment shall move. In re Express Rates, 380 (393).

RUBBER STAMPS. *See* MARKING PACKAGES.RULES, REGULATIONS, AND PRACTICES. *See also* DELIVERY; EMBARGO; MARKING PACKAGES; PACKING; SUBSTITUTED ARTICLES; TICKETS; TRANSIT PRIVILEGES; BILL OF LADING.

The Commission has jurisdiction over all rules, regulations, and practices that enter into rates and determine their value and availability. Transit case, 340 (343); Larkin Co. v. E. & W. T. Co. 645 (647).

The rules of express companies need even more drastic revision than is herein suggested. In re Express Rates, 380.

## SALT.

Its value being low, the freight rate determines largely the cost at which salt can be laid down at a particular point. In re Rates on Salt, 192 (193).

## SAND.

Is a low grade article; it loads heavily; does not require fast service and the risk is not great. In re Advances on Sand and Gravel, 249 (252).

SATISFACTION OF COMPLAINT. *See* ABSTRACT QUESTION.SCHOOL CHILDREN. *See* TICKETS.

**SECTION 1.** *See also* THROUGH ROUTES; REASONABLE CHARGES; REASONABLE RATES; CARRIERS; JURISDICTION OF COMMISSION.

The provision of section 1 imposing the duty of establishing through routes should not be subjected to a narrow construction but should be read in connection with the latter part of section 3, in connection with section 15, and with regard to the intendment of the act as a whole and the correction of the evils it has sought to remedy. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

**SECTION 2.** *See* DISCRIMINATION.

**SECTION 3.** *See also* PREFERENCES AND PREJUDICES; CARRIERS; TERMINAL FACILITIES.

Section 3 requires every carrier subject to the act to afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and forbids discrimination in rates and charges between connecting carriers. This provision broadens section 1 and makes plain the intent of Congress that every reasonable and proper facility shall be extended equally by a carrier to all its connections and that no discrimination in its charges shall be made in favor of or against any connecting line. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

**SECTION 4.** *See* LONG AND SHORT HAUL.

**SECTION 6.** *See also* LEGAL RATES; TARIFFS.

The chief function of section 6 is to accord and require the application of the same rate to all shippers and to promote equality of treatment between them. *Crescent Coal Mining Co. v. C. & E. I. R. R. Co.* 149 (158).

**SECTION 7.** *See* CONTINUOUS CARRIAGE.

**SECTION 15.** *See* ADVANCE IN RATES; RULES, REGULATIONS, AND PRACTICES; THROUGH RATES; DIVISION OF THROUGH RATES; THROUGH ROUTES; BURDEN OF PROOF; ALLOWANCES.

**SECTION 16.** *See* LIMITATION OF ACTIONS.

**SECTION 20.** *See* RECORDS.

**SET-OFF.** *See* UNDERCHARGES.

**SHASTA ROUTE.**

*R. R. Com. of Oregon v. S. P. Co.* 273 (276).

**SHORT LINE.** *See* INDUSTRIAL ROADS.

**SHRINKAGE.** *See* WEIGHT.

**SHRINKING RATES.**

*Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594 (596).

**SPHERES OF INFLUENCE.**

*Commercial Club of Superior v. G. N. Ry. Co.* 96 (120).

**SPUR TRACK.** *See* SWITCHING.

**STAMPS.** *See* MARKING PACKAGES.

**STANDARD LINES.**

*Flour City S. S. Co. v. L. V. R. R. Co.* 179 (182).

**STARE DECISIS.** *See* ESTOPPEL; PRECEDENTS; RES ADJUDICATA.

**STATE COMMISSION.** *See* PARTIES.

**STATE LAW.**

Validity of state law declaring pipe lines to be common carriers, not passed upon. *In re Pipe Lines*, 1.

**STATE RATES.** *See also* STATE TRAFFIC.

The Commission has no jurisdiction over state rates. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (584).

## STATE-TO-STATE OPERATIONS.

In re Pipe Lines, 1 (7).

STATE TRAFFIC. *See also* INTERSTATE COMMERCE.

The Commission has jurisdiction over a shipment from an interior point to a port of the same state when for transshipment beyond the state. *Pittsburgh Vein Operators of Ohio v. P. Co.* 280.

The Commission has no jurisdiction over a shipment of vessel-fuel coal from an interior point to a port of the same state, not going outside the state and delivery being made to the vessel at the dock. *New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.

A shipment between two points in the same state, passing en route through part of another state, is subject to the act. *Johnson & Hunt v. St. L. I. M. & S. Ry. Co.* 648.

STATIONS. *See also* DELIVERY; SWITCHING; TERMINAL FACILITIES; WHARVES AND WHARFAGE; TICKETS.

Held that "Nassau" is a separate station beyond "Depue" and that on shipments to Nassau defendants under their tariffs should have collected the proportional rate to Depue for beyond. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149.

STOPOVER PRIVILEGE. *See* TICKETS.STORAGE. *See also* DEMURRAGE.

Moderate storage charges should accrue against express consignment which is held because of consignee's refusal to accept. In re Express Rates, 380 (407).

## STORE-DOOR DELIVERY.

*Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205 (206).

STREET RAILROADS. *See also* TICKETS.

A street railroad operating from one state to another is subject to the act. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26); *Bitzer v. W.-V. Ry. Co.* 255; *Ford v. W.-V. Ry. Co.* 632.

Complaint seeking establishment or restoration of routing for certain interstate electric passenger cars over a viaduct owned by a bridge company which is not a common carrier subject to the act, dismissed for want of jurisdiction, the relief sought being a plan of physical operation. *Kansas City v. K. C. V. & T. Ry. Co.* 22.

One-way and round-trip fares between Washington, D. C., and Virginia points found unreasonable and defendant required to provide commutation rates from designated stations so long as such rates are maintained from other stations under similar circumstances. *Bitzer v. W.-V. Ry. Co.* 255.

A rule of a street railway company which prohibits the sale on its trains of round-trip tickets to interstate passengers from its station in Washington, D. C., where such tickets are kept on sale, is not unlawful; but defendant required to accord passengers boarding cars at Bureau of Engraving & Printing the same privileges as are accorded at other non-agency stations. *Ford v. W.-V. Ry. Co.* 632.

SUBJECT TO ACT. *See* CARRIERS.

## SUBSTITUTED ARTICLES.

Where one article of a bulked shipment is lost through the fault of a carrier and a second article of the same kind is shipped to take the place of the first, such second shipment should be made by carrier without additional charge. *Larkin Co. v. E. & W. T. Co.* 645 (648).



**SUBSTITUTED ARTICLES—Continued.**

One article of a bulked shipment was lost in transit through the fault of the carrier. On a second article of the same kind sent to take the place of the lost article, the full minimum charge was collected. Held that complainant was entitled to damages to the extent of the additional charge thus accruing through no fault of the shipper. *Larkin Co. v. E. & W. T. Co.* 645.

**SUBSTITUTION OF TONNAGE.** See **TRANSIT PRIVILEGES.**

**SUPPLEMENTAL HEARING.** See **HEARING.**

**SUSPENSION OF RATES.** See **ADVANCE IN RATES.**

**SWITCHING.** See also **DELIVERY; WHARVES AND WHARFAGE; TERMINAL FACILITIES.**

**SWITCHING SERVICE.**

Whether the switching between the tracks of a carrier and the loading and unloading points of an industry is part of interstate transportation, not directly passed upon. Industries performing such service are not entitled to additional time allowance. *Alan Wood Iron & Steel Co. v. P. R. R. Co.* 27 (30).

A carrier is not required to switch a car containing an interstate shipment from a connecting line to its own team track for unloading by the consignee. *R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292.

A spur track at Little Rock, Ark., constructed jointly by defendant carrier and the state of Arkansas, held not to be the carrier's own team track, and defendant's refusal to switch from a connecting line to said spur track a shipment of building material for the State capitol, found to be in violation of its switching tariff and in violation of the act. *Id.* 292.

When necessary, the Pennsylvania Railroad should perform the switching from the Union docks to the tracks of the Lehigh Valley and the Lackawanna. That company can not now claim that so to do would necessitate the incorporation of substantially less than the entire length of its line between the termini of the proposed through route. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (180).

Carrier not required to resume delivery of melons at a certain pier in New York, conditions justifying a change of the place of delivery from New York to Jersey City. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 561 (568).

Merchants of Washington, D. C., located on Fourteenth street, northwest, between Florida avenue and Park road, are subjected to undue prejudice by being compelled to pay a drayage charge on less-than-carload freight shipments while merchants located in Georgetown are given free pick-up and delivery service. Carriers required to remove this discrimination. *Casassa v. P. R. R. Co.* 629.

**RECIPROCAL SWITCHING.**

A reciprocal switching arrangement at Chicago, Ill., excluded shipments of ice from its operation. Held, that this constitutes an unjust discrimination and that ice should be included. *In re Advances on Ice*, 660.

**ABSORPTION OF CHARGES.**

Advance in rates, resulting from discontinuance of reciprocal absorption of switching charges, not justified and advance condemned. *In re advances on Sand and Gravel*, 249 (250).

The absorption by defendant carriers of bridge charges on traffic to Louisville, Ky., located on the south bank of the Ohio River, and the refusal to absorb such charges at New Albany, Ind., on the north bank of the

## SWITCHING—Continued.

## ABSORPTION OF CHARGES—Continued.

river opposite Louisville, while contemporaneously such charges were absorbed at other north-bank points, subjects New Albany to undue prejudice. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (339).

Refusal of defendants to absorb the charges of a delivering belt line to the extent of their general switching absorption on lumber in Kansas City, found to be discriminatory. *Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205.

Compliance with requirement of Commission in this case will necessitate an absorption of switching charges. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (191).

Absorption of switching charges of short line. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (153).

Absorption of drayage charge. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (581).

## SWITCHING CHARGES.

Evidence held insufficient to decide question of reasonableness of switching charge at New Albany, Ind. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 331 (339).

Carrier held to be justified in advancing St. Louis rate and reducing the East St. Louis rate in order to place these two points upon an equality. *Lumbermen's Exchange of St. Louis v. A. & S. R. R. R. Co.* 220.

The contention that on cottonseed from Missouri to East St. Louis the rate should be the same as to St. Louis, not passed upon because not put in issue by original complaint. *East St. Louis Cotton Oil Co. v. A. T. & S. F. Ry. Co.* 588 (592).

The Commission is not to be understood as sanctioning the action of carriers in establishing joint rates, divisions, or allowances, in the form of switching charges or otherwise, between the Depue & Northern Railroad and its connections. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (157).

For switching a car of sand and gravel, loaded to 55 tons, from complainant's switch in New Albany to Louisville, a switching charge of \$11 was imposed, while switching service for similar distances in and about Louisville was performed for \$5 per car, regardless of weight. Switching charge imposed not found unreasonable. *Slider v. S. Ry. Co.* 312 (313).

SYSTEM. *See also* POINTS OFF LINE.

The Commission can not consider the carriers as one great and single system. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (70).

The North Western and Omaha roads, though operated as separate companies, being under a substantially common ownership and control, are considered as one system for the purposes of this case. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (111).

Where two lines are members of the same system, the fact that a movement over such lines involves a two-line haul is of little importance. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215).

## TANK CARS.

Refrigeration charges on full-tank and half-tank cars. In re *Advances on Fruits and Vegetables*, 164.

TAP LINES. *See* INDUSTRIAL ROADS.

**TARIFFS.** *See also* LEGAL RATES; OFFICIAL RAILWAY GUIDE; MAPS; RAND-McNALLY ATLAS.

**FILING TARIFFS.**

Certain pipe lines ordered to file with Commission schedules of their rates and charges. *In re* Pipe Lines, 1.

Tariffs not filed with Commission are not valid. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (367).

**CONCURRENCE.**

So far as charges on its own road are concerned, a carrier can not be bound by tariffs of its connections in which it has not concurred; neither can it ignore the provisions of the tariffs of its connections with reference to charges for services performed by those connections. *Hull Co. v. S. Ry. Co.* 302 (303).

**AMENDMENTS.**

A tariff which was neither reissued nor amended so as to comply with special order No. 3 of the Commission was not a lawful tariff after June 1, 1909. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (366).

**FORM OF TARIFFS.**

A simple method of stating express rates required by Commission. *In re* Express Rates, 380.

The law requires that tariffs shall state plainly the rates applicable to any transportation which the railroads perform. Published tariffs are of little value if a shipper can not depend upon the statements therein contained. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (153).

Ambiguous tariff resulted in unreasonable charges on an automobile shipped from El Paso, Tex., to Los Angeles, Cal. Reparation awarded. *Alexander v. S. P. Co.* 306.

It is the duty of a carrier to set forth in connection with the published rate any exceptions thereto or references to any rules, regulations, or conditions affecting the application of the rate; and, if this is not done, the rate is absolute and unlimited as to all points within its purported application. *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.* 149 (155).

**CONSTRUCTION.**

An initial carrier's tariff provided for a deduction in weight on account of moisture; a connecting carrier, which participated in the movement, neither concurred in the such tariff nor had a similar tariff provision of its own; held, that complainant was entitled to the deduction only on that part of the haul performed by the initial carrier. *Hull Co. v. S. Ry. Co.* 302.

**TEAM TRACKS.**

*R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292 (294); *Dierks & Sons Lumber Co. v. M. P. Ry. Co.* 205 (206).

**TERMINAL DELIVERY.** *See* DELIVERY.

**TERMINAL FACILITIES.** *See also* DELIVERY; SWITCHING; WHARVES AND WHARFAGE.

A freight depot owned by a carrier is a terminal facility for use in handling business from its own line and can not, under section 3, be used for handling business from other lines without its consent. *R. R. Com. of Arkansas v. St. L. I. M. & S. Ry. Co.* 292 (295).

**TERMINAL RATES.**

While the Commission is not to be understood as approving the extension of terminal rates to nontidewater points, defendants required to apply such rates at Santa Rosa so long as such rates are applied at San Jose and other nontidewater points. *Santa Rosa Traffic Asso. v. S. P. Co.* 46.



THROUGH BILLING. *See* BILL OF LADING.

THROUGH RATES. *See also* THROUGH ROUTES; DIVISION OF THROUGH RATES. IN GENERAL.

Under section 1 the carriers must make reasonable rates applicable to through routes. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (184).

That a transportation involves a two system or a two or three line haul, while frequently considered in rate construction, is of little importance in this case. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213 (215).

#### COMBINATION RATES.

Combination through rates are usually higher than joint through rates.

*R. R. Com. of Oregon v. S. P. Co.* 273 (274); *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (225).

Maintenance of a combination through rate on coal loaded in open cars while at the same time maintaining a lower joint through rate on coal when loaded in box cars not condemned. *Asbury Smith Logsdon v. I. C. R. R. Co.* 624.

On complaint attacking only a portion of a combination through rate, held that the portion attacked was unreasonable. *Bascom-Porter Co. v. A. T. & S. F. Ry. Co.* 297; *R. R. Com. of Oregon v. S. P. Co.* 273 (277).

Where only a portion of a combination through rate is attacked, all the carriers that are parties to the combination rate need not be made parties defendant. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594.

#### JOINT RATES.

The Commission will exercise its power to fix joint rates whenever and only where the circumstances and conditions of the case clearly warrant it. Even though it be shown that a railroad is a common carrier, it may be that the purposes of the act will not be served but will be defeated by the establishment of joint rates with it. *McCloud River Lumber Co. v. S. P. Co.* 89 (94).

While the Commission at this time does not establish a joint rate from Duluth to New York in connection with the complaining steamship company, operating between Duluth and Buffalo, it indicates what would be a fair division of such joint rate. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (190).

Rail lines from Galveston to designated interior points should establish joint through rates with all responsible steamship companies plying between the Atlantic seaboard and Galveston. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (580).

Joint rate on coal required to be established from Utah mines to all points taking such rates from Rock Springs mines. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213.

Right of complainant to have joint rates extended back over their industrial lines to their mines, reserved for further consideration. *Id.* 213.

Petition for establishment of joint rates on coal from Taylor, Pa., to interstate destinations, not passed upon. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (141).

Prayer for establishment of joint through rates on grain from northern producing points to Duluth-Superior via the Great Northern crossings, denied. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (97).

Express companies required to unite in forming joint rates, reaching all cities and towns accessible to each other by the shortest route measured in time. *In re Express Rates*, 380.

## THROUGH RATES—Continued.

## JOINT RATES—Continued.

Joint through rates over rails of short lines or industrial roads required to be established. *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161; *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639; *McCloud River Lumber Co. v. S. P. Co.* 89. Cancellation of joint rates resulted in increase of total charges. Carrier, failing to justify the advance, required to restore former joint rate. In *re Advances on Coal*, 43.

Joint through rate on cotton-compress machinery in carloads from New Orleans to Marshall, Tex., found unreasonable. *Loeb v. T. & P. Ry. Co.* 304.

Joint rates, water and rail, from Atlantic seaboard to Texas points, on classes and commodities not found unreasonable. *Southwestern Shippers' Traffic Asso. v. A. T. & S. F. Ry. Co.* (570).

Due in part to the elimination of terminal services in a through movement, it is the rule that through charges are lower than the combination of intermediate rates. *R. R. Com. of Oregon v. S. P. Co.* 273 (274); *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.* 220 (225).

THROUGH ROUTES. *See also* THROUGH RATES.

## DEFINITION.

The words "through route" contemplate an agreement, voluntary or under requirement of the Commission, of two or more carriers to provide a line made up of all or parts of their lines between certain points. *Kansas City v. K. C. V. & T. Ry Co.* 22 (26).

## DUTY OF CARRIERS.

Section 1 imposes on carriers the duty to establish through routes and make reasonable rates applicable thereto. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (184).

The provision of section 1 imposing the duty of establishing through routes should not be subjected to a narrow construction, but should be read in connection with the latter part of section 3, in connection with section 15, and with regard to the intentment of the act as a whole and the correction of the evils it has sought to remedy. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

Carriers should freely interchange freight between their respective lines to the end that interstate commerce may move without interruption or delay. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (184).

Carriers should establish through routes and joint rates so that there may be the freest movement of traffic without the necessity of reshipment. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (76).

## JURISDICTION OF COMMISSION.

Section 15 provides that the Commission may establish through routes and joint rates and prescribe the division of such rates and the terms and conditions under which such through routes shall be operated whenever the carriers themselves have refused or neglected voluntarily to establish such through routes or joint rates, and it further provides that this shall apply when one of the carriers is a water line. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

Prior to 1910 the power of the Commission to establish through routes was limited to instances in which no satisfactory through route existed. Under the law to-day the existence of through routes capable of adequately and expeditiously handling all traffic is entitled to consideration, but no longer constitutes a bar to the establishment by the Commission

## THROUGH RATES—Continued.

## JURISDICTION OF COMMISSION—Continued.

of another route, provided the company with which the new route is asked is a common carrier subject to the act. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (185).

A complaint seeking the establishment or restoration of routing for certain interstate electric passenger cars over a viaduct owned by a bridge company which is not a common carrier subject to the act, dismissed for want of jurisdiction, the relief prayed being a plan of physical operation in changing a route. *Kansas City v. K. C. V. & T. Ry. Co.* 22.

## PARTIES.

## BRIDGE COMPANIES.

The Commission has no jurisdiction to compel a bridge company which is not a common carrier subject to the act to grant to a street railway the right to use a certain viaduct for the routing of interstate electric passenger cars. *Kansas City v. K. C. V. & T. Ry. Co.* 22 (26).

## INDUSTRIAL ROADS.

Common-carrier industrial roads are entitled to be parties to through routes. *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161; *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634; *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639; *McCloud River Lumber Co. v. S. P. Co.* 89.

Right of industrial road to be made a party to through routes, not decided. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213.

## WATER CARRIERS.

A steamship company, plying between Duluth and Buffalo, by reason of a common arrangement with a rail carrier for a continuous carriage of interstate commerce, held to be subject to the act, and as such entitled to be a party to a through route. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

That a steamship company has no vessels and that its stock is not paid in does not deprive it of the right to a ruling by the Commission as to whether it is entitled to be part of a through route in connection with rail carrier. *Id.* 179 (186).

LINE HAUL. *See also* SWITCHING.

It is the right of a carrier to so adjust its rates as to preserve to its own line the long haul on traffic from originating territory reached by its rails, so far as this may be done without trespassing on the rights of shippers. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (615).

In the formation of through routes a carrier has a right to protect its own long haul and a carrier may not be required against its will to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points, except when an unreasonably long or circuitous route would otherwise be created. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (76).

The law contemplates protecting a carrier in its long haul on traffic which it originates; and the Commission will not ordinarily lend its aid to an effort by one carrier to secure traffic that is reasonably tributary to another by compelling the latter to join in through routes and joint rates. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (113).

Having undertaken and performed such service, a railroad can not be heard to say that the requirement of the Commission to switch from the docks to another line will necessitate the incorporation of substantially



## THROUGH RATES—Continued.

## LINE HAUL—Continued.

less than the entire length of its own line between the termini of a proposed through route. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (191). In arranging the divisions between connecting express companies due consideration should be given to the surrender by the originating line of its right to retain possession of traffic for the longest possible haul over its own lines. *In re Express Rates*, 380 (411).

Under the act the Commission can not require any company without its consent to embrace in a through route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route, which could otherwise be established. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (112).

Under the provisions of the act requiring the Commission in establishing joint rates to give the carriers the benefit of the long haul, it is doubtful whether the Commission could establish from New Albany via the New York Central, through New York to Wichita, a joint through rate, thereby depriving the New York Central of the longer haul on this business, either rail-and-lake or all rail. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (586).

## IN GENERAL.

Express companies must unite in direct through routes, reaching all cities and towns accessible to each other by the shortest route measured in time. For the present, this matter will be left in the hands of the carriers, no order being entered. *In re Express Rates*, 380 (382).

Through routes required to be established on coal from Utah mines to all points enjoying through routes from the Rock Springs mines. *Consolidated Fuel Co. v. A. T. & S. F. Ry. Co.* 213.

From McCloud, Cal., to eastern destinations, through routes on lumber required to be established. *McCloud River Lumber Co. v. S. P. Co.* 89.

Prayer for establishment of through routes on grain from northern producing territory to Duluth-Superior via Great Northern crossings, denied. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (97).

Through routes required to be established from Laona, Wis., to interstate destinations. *L. & N. R. R. Co. v. M. St. P. & S. S. M. Ry. Co.* 639

Through routes required to be established from Atlanta, Wis., to interstate destinations. *C. V. & N. Ry. Co. v. M. St. P. & S. S. M. Ry. Co.* 634.

Through routes on lumber from points on line of complainant industrial road to interstate destinations required to be restored. *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161.

Prayer for establishment of through routes on coal from Taylor, Pa., to interstate destinations, not passed upon. *Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (141).

## TICKETS.

## IN GENERAL.

One-way passenger tickets between Washington, D. C., and Mount Vernon, Va., and between Washington and points on the Falls Church division of defendant, found unreasonable and reasonable rates prescribed. *Bitzer v. W.-V. Ry. Co.* 255.

## TICKETS—Continued.

## COMMUTATION TICKETS.

So long as defendant sells 25-trip family tickets or 52-trip commutation tickets to and from one station, such tickets should be furnished under similar conditions to and from other stations. *Bitzer v. W.-V. Ry. Co.* 255 (257).

Limitation of life of 25-trip family tickets to 30 days not found unreasonable. *Id.* 255 (257).

Special commutation rates limited to pupils not over 18 years old, who are actually attending grammar or high schools, are unduly discriminatory; but no sufficient reason is shown why special commutation rates for young persons between certain ages should not be established, provided the rates are not limited to pupils of schools of any particular kind or class and do not exclude other persons between the same ages who travel under similar circumstances. *Id.* 255 (257).

## EXCURSION AND ROUND-TRIP TICKETS.

Round-trip tickets between Washington, D. C., and Mount Vernon, Va., and between Washington and points on the Falls Church division of defendant carrier, found unreasonable and reasonable rates prescribed. *Bitzer v. W.-V. Ry. Co.* 255.

A rule of defendant which prohibits the sale on its train of round-trip tickets to interstate passengers from its station in Washington, D. C., where such tickets are kept on sale, is not unlawful; but defendant required to accord to passengers boarding cars at Bureau of Engraving & Printing the same privileges as are accorded at other nonagency stations. *Ford v. W.-V. Ry. Co.* 632.

The time limit on the going portion of certain excursion tickets to San Francisco had expired, through no fault of the carrier, before the holders reached Portland. Held, that additional fares from Portland to San Francisco were properly collected; that such additional fares are not shown to have been unreasonable or unjust; and that the facts do not justify an amendment of rule 69 of Tariff Circular 18-A. *Parker v. S. P. Co.* 681.

A tariff provision that, in case of illness of an excursion-ticket holder or of an accompanying member of the family of the holder, a stop-over may be granted and the limit of such ticket extended by exchange or otherwise, as may be necessary, after a passenger has sufficiently recovered to resume the journey, applies only in case of the illness of a passenger; and only such illness as makes travel dangerous to the health of a passenger will justify the extension; and an extension is not proper where the delay at an intermediate point is caused by the illness of a person not a passenger. *Id.* 681 (682).

## TIDEWATER SHIPMENTS.

*Marian Coal Co. v. D. L. & W. R. R. Co.* 140.

## TIME.

The time usually occupied in transportation between the termini of joint express routes should be specified in express tariffs; but this is not to be construed as a guarantee to deliver within that time. In re Express Rates, 380 (393).

TIME LIMIT. *See* TICKETS.

TON PER MILE. *See* REVENUE.

## TONNAGE.

Amount of tonnage considered in determining reasonableness of rate. In re Advances on Cooperage, 656 (659).

## TOURIST TRAIN RATES.

*Bitzer v. W.-V. Ry. Co.* 255 (258).

## TRACKAGE.

A carrier may not grant a trackage privilege to a shipper unless it is authorized by its tariff and open to all shippers on equal terms. *B. & G. N. R. R. v. A. T. & S. F. Ry. Co.* 161 (163).

Holding under trackage agreement held to be tantamount to ownership of line over which the trackage privilege existed. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (112).

TRADE CENTERS. *See* MARKETS.

TRAIN FARE. *See* TICKETS.

## TRAIN SERVICE.

Higher rate permitted for passenger service on express trains than on local trains. *Bitzer v. W.-V. Ry. Co.* 255 (259).

## TRANSCONTINENTAL RATES.

*R. R. Com. of Oregon v. S. P. Co.* 273 (274).

TRANSFER. *See* BRIDGES; SWITCHING.

## TRANSIT PRIVILEGES.

## IN GENERAL.

Transit privileges are now a commercial necessity in most instances. Transit case, 340 (349).

- ✓ Milling in transit is a practice that is almost universal throughout the country. Its substantial effect is to permit grain to be shipped to, and the products from, the milling point under a total charge which equals the through charge on grain from the origin of the grain to the destination of the product. In some instances a slight additional charge is made for the transit privilege. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (119).

- ✓ The Commission does not condemn all milling in transit; it recognizes the commercial necessity of mixing grain for milling and grading purposes; but the rates and regulations must be reasonable and nondiscriminatory, and the policing authority must be such as to prevent irregular and unlawful practices. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (119).

The framing of rules and regulations governing transit privileges rests primarily on the carriers; and while the Commission recommends the establishment of transit inspection bureaus, the carriers will still be held responsible for the proper policing of such privileges. Transit case, 340 (347, 350).

Rates on barley from California to Minneapolis were advanced in order to prevent malting in transit at Minneapolis. Held, that the advanced rates were unduly prejudicial to Minneapolis and unduly preferential to Chicago. *In re Advances on Barley*, 664.

## JURISDICTION OF COMMISSION.

The act as amended gives to the Commission adequate power to regulate transit privileges, and it may upon full hearing prescribe such rules and regulations therefor as will in its opinion free the operation of transit privileges from illegal practices. Transit case, 340.

As to their reasonableness or discriminatory effect, transit privileges and all rules or regulations in connection therewith are subject to the jurisdiction of the Commission. Unlawful rules may be condemned and others prescribed by the Commission. *Id.* 340 (343).

## TARIFF AUTHORITY.

All transit privileges must be published in accordance with section 6. Transit case, 340 (343).



## TRANSIT PRIVILEGES—Continued.

## CHARGES.

Section 1 imposes upon carriers the duty to furnish elevation at reasonable charges. Transit case, 340 (343).

Reasonable allowances for elevation recommended by Commission. In re Elevation Allowances, 197.

## BILLING.

Railroad billing of inbound and outbound movements should describe with sufficient particularity the commodity upon which the privilege is accorded; and the outbound billing should show full reference to the inbound billing. Transit case, 340.

All paid expense bills should be recorded with the policing authority of the carriers within a reasonable time after the receipt of the shipment at a transit point; and all surplus billing should be canceled absolutely at the close of each business day. Id. 340.

## MIXED CARLOADS.

The application, on a mixed carload shipment of grain or grain products, of a proportional carload rate or the balance of a through carload rate, to the transit portion of the shipment, and of the flat carload rate to the nontransit portion, not found objectionable when restricted by provisions suggested in the report and properly safeguarded. Such adjustment is to the public interest. *Southwestern Millers' League v. A. T. & S. F. Ry. Co.* 552.

## MIXED FEEDS.

A feed that contains nontransit ingredients in excess of 20 per cent of its total weight is not to be considered a grain product but is a new commodity and is entitled to move from the transit point only on the specific rate in effect from that point. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (617); Transit case, 340 (355).

The general principle of balancing the outbound movement against the inbound movement should be applied to mixed feed. Transit case, 340.

## PROPORTION OF INBOUND AND OUTBOUND MOVEMENTS.

The outbound movement of the product from the transit point should be balanced against the inbound movement of the grain upon the basis of well-known average ratios of the products of the grain. This principle should be applied to mixed feed. Transit case, 340.

The maintenance at Memphis, Tenn., of a rule fixing the proportion of the outbound movement between the principal products and the by-products is reasonable in itself, but Memphis is discriminated against by reason of the fact that at other cities the rules provide simply that the aggregate amount of the outbound movement should not exceed a certain percentage of the inbound weight. This discrimination against Memphis should be corrected by adjusting the rules elsewhere. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (612).

Order of suspension herein will be vacated upon the filing by the defendant of tariffs providing for transit rates on 3 pounds of logs shipped in for each pound of lumber, dressed or rough, shipped out, and limiting the privilege to 12 months. In re Advances on Logs, 683.

## RECORDS.

A rule enforced at Memphis, Tenn., requiring verification of transit records not found unlawful; practices elsewhere should be so adjusted as to give Memphis no cause for complaint of this rule. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (611).

## TRANSIT PRIVILEGES—Continued.

## REPORTS.

Requirement of daily reports by millers and reshippers of grain at Memphis not found unlawful; practices elsewhere should be adjusted so as to give Memphis no cause for complaint of this rule. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (611).

Rules of carriers should require certificates as to the transportation character of all grain contained in a transit house; and a daily report should be furnished by the receiver of a transit privilege which should state the required information as to the contents of a transit house, if any of said contents is accorded a transit privilege. Transit case, 340.

## SUBSTITUTION OF TONNAGE.

As a general rule all substitutions of tonnage at transit points are in violation of the law and must be eradicated or minimized to the last degree. Transit case, 340 (349).

Where a commodity must of necessity lose its actual identity, there is no requirement that such identity must be preserved. *Id.* 340 (350).

It is impossible to preserve the identity of grain when mixed with other grain for producing a blended milled product. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (119).

A commodity mixed at a transit point may, under proper policing, be sent to destination on the balance of a through rate where such rate is the same as would apply to the grains, which moved in under transit rates, had they moved separately. Transit case, 340 (350).

When a commodity is manufactured from materials more than 20 per cent of which is nontransit material it should no longer be entitled to a transit privilege, but should be considered as a separate and distinct commodity. *Id.* 340 (355).

Corn moves into a mill and is made into glucose. The glucose is mixed with a substantial percentage of refiner's sirup, a nontransit product. The whole is then inclosed in cans which are crated. In that form the so-called corn sirup for table use reaches Chicago under a rate for corn. It is doubtful that this can sirup for table use may properly be regarded as a product of corn for rate making purposes. *Iowa v. A. C. L. R. R. Co.* 134 (139).

## TIME LIMIT.

Transit privileges should be limited absolutely to one year, at the expiration of which all privileges should cease and the full local rate, class and commodity, both into and out of the transit house, should apply. Transit case, 340.

Twelve months' limitation on transit privilege on lumber at Nashville, Tenn., not condemned. In re *Advances on Logs*, 683.

Upon complaint that a six months' limitation in connection with a milling in transit privilege on logs at Memphis, Tenn., is unreasonable, held that, as the privilege was conditioned upon the use to which the commodity is put, it should not be sanctioned by an award of reparation. *Memphis Freight Bureau v. S. L. & S. F. R. R. Co.* 602.

A rule in force at Memphis, Tenn., by which the life of transit expense bills is limited to six months is reasonable in itself. Practices elsewhere should be so adjusted as to remove the discrimination against Memphis. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (612).

## WEIGHT DEDUCTIONS.

From the weight of the inbound grain there should be deducted an arbitrary loss of not less than 1 per cent in milling wheat; 16 per cent in malting

## TRANSIT PRIVILEGES—Continued.

## WEIGHT DEDUCTIONS—Continued.

barley; 10 per cent in drying corn; 20 per cent in shelling corn; and 11½ per cent in cleaning and clipping grain. Transit case, 340.

A rule enforced at Memphis, Tenn., providing that when grain is subjected to any process resulting in loss of weight only the weight remaining shall be entitled to a reshipping privilege not found unlawful; practices elsewhere should be so adjusted as to remove discrimination against Memphis. *Memphis Grain & Hay Asso. v. St. L. & S. F. R. R. Co.* 609 (611).

## RETROACTIVE EFFECT.

Retroactive application of transit privilege denied. *Globe Milling Co. v. C. M. & St. P. Ry. Co.* 594; *Rosenbaum Bros. v. B. & O. R. R. Co.* 287.

## TRANSPORTATION.

Whether the switching between the tracks of the carrier and the loading or unloading points of an industry is a part of interstate transportation, discussed but not passed upon. *Alan Wood Iron & Steel Co. v. P. R. R. R. Co.* 27 (30).

Transportation defined. Transit case, 340 (343); In re Elevation Allowances, 197 (199).

## TRANSSHIPMENT.

New Pittsburgh Coal Co. *v. H. V. Ry. Co.* 244; Pittsburgh Vein Operators of Ohio *v. P. Co.* 280.

## TRIBUTARY TERRITORY.

Memphis Grain & Hay Asso. *v. St. L. & S. F. R. R. Co.* 609 (613); Commercial Club of Superior *v. G. N. Ry. Co.* 96 (113).

## TRUNK LINES.

Western termini of trunk lines, described. Chamber of Commerce of New York *v. N. Y. C. & H. R. R. R. Co.* 55 (69).

## TWIN CITIES.

Business Men's League of Albert Lea *v. B. & O. R. R. Co.* 125.

TWO CARS FOR ONE. *See* CAR SIZE.TWO LINE HAUL. *See* THROUGH ROUTES.

## UNDERCHARGE.

In awarding damages, the Commission does not undertake to offset underpayments and overpayments. *Crutchfield & Woolfolk v. S. P. Co.* 651 (655).

It is understood that the undercharges in this case may be waived. *Riverside Mills v. St. L. I. M. & S. Ry. Co.* 264 (271).

UNIFORM DEMURRAGE CODE. *See* DEMURRAGE.UNJUST DISCRIMINATION. *See* DISCRIMINATION; PREFERENCES AND PREJUDICES.UNREASONABLE RATES. *See* REASONABLE RATES.

## USE.

The Commission has consistently condemned the maintenance of different rates upon the same commodity dependent upon the use to which the article is put. *Hardie Mfg. Co. v. O. R. R. & N. Co.* 545 (546); *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.* 602.

The Commission will not sanction a transit privilege conditioned upon use by an award of reparation. *Memphis Freight Bureau v. St. L. & S. F. R. R. Co.* 602.

Rate on coke to Carondelet not found unreasonable, unjustly discriminatory, or unduly prejudicial as compared with rates to Chicago, where a lower rate obtains when the coke is for use in blast furnaces. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 360.



**VALUE OF COMMODITY.**

Value of commodity considered in determining reasonableness of rate.

*Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

**VESSEL-FUEL COAL.**

*New Pittsburgh Coal Co. v. H. V. Ry. Co.* 244.

**VIADUCTS. See BRIDGES.****VOLUME.**

A shipper is entitled to have his commodities moved at reasonable rates without reference to the number of his shipments. *Bancroft-Whitney Co. v. C. N. O. & T. P. Ry. Co.* 557 (558).

**VOLUNTARY RATE.**

A competitive rate can not be said to be voluntary and ought not to be used as a standard of comparison. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (587).

Fact that carriers voluntarily established a rate on watermelons from the southeast to the middle west which was lower than the rate to the Atlantic seaboard does not, in this case, stamp the rate to the Atlantic seaboard as unreasonable. *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.* 560 (565).

**VOLUNTARY REDUCTION. See REDUCTION.****WAGES.**

Wages of employees. *Pittsburgh Vein Operators of Ohio v. P. Co.* 280 (283).

**WAGON HAUL.**

*Santa Rosa Traffic Asso. v. S. P. Co.* 46 (47).

**WASHERY COAL.**

*Marian Coal Co. v. D. L. & W. R. R. Co.* 140 (141).

**WATER CARRIERS. See also RAIL-AND-WATER RATES.**

A steamship line, operating between Duluth and Buffalo, under a common arrangement with a rail carrier, is subject to the act and entitled to form part of a through route. *Flour City S. S. Co. v. L. V. R. R. Co.* 179.

The publication of proportional rates by rail carriers and a lake carrier covering through interstate transportation, the actual movement of traffic upon through bills of lading and the prepayment of freight charges, necessitating an accounting between the carriers, is evidence of a common arrangement for a continuous carriage. *Id.* 179.

That a complaining steamship corporation has no vessels and that its stock is not paid in, is no objection to its right to obtain a ruling from the Commission as to whether such company will be a party to through routes when it is able to transport. *Id.* 179 (186).

The Commission has no power to compel lake lines to run their boats to a given city. *Escanaba Business Men's Asso. v. A. A. R. R. Co.* 11 (17).

The Commission has no jurisdiction of ocean rates and it must deal with the import and export rate situation as though the ports were destinations instead of gateways. *Chamber of Commerce of New York v. N. Y. C. & H. R. R. R. Co.* 55 (74).

Ocean rates fluctuate according to the spare room as the time approaches when the vessel must sail. *Id.* 55 (70).

Full-cargo rates are now the same from all the North Atlantic ports but substantially no full-cargo business is done except at Baltimore and Philadelphia. *Id.* 55 (69).

Conditions governing water transportation are entirely unlike those pertaining to rail transportation. The cost of operating the ship is practically the same whether it carries a full cargo or no cargo. The profitability of water transportation under a given schedule of rates would

**WATER CARRIERS—Continued.**

depend wholly upon the ability of the ship to obtain a load. Much would also depend on the possibility of obtaining a loading in both directions. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (582).

The cost of transportation per mile by water is comparatively high for short distances and very small for long distances. *Id.* 570 (583).

Water transportation between the Atlantic seaboard and Galveston has never been open to free competition. *Southwestern Shippers Traffic Asso. v. A. T. & S. F. Ry. Co.* 570 (579).

**WATER COMPETITION.** *See* COMPETITION.

**WATER MILES.** *See* CONSTRUCTIVE MILEAGE.

**WEAK AND STRONG LINES.**

The interests of all lines must be considered by the Commission, and not alone those of the line that can handle the traffic with the least cost. *Commercial Club of Superior v. G. N. Ry. Co.* 96 (102).

**WEATHER INTERFERENCE.** *See* DEMURRAGE.

**WEIGHING CHARGE.**

*St. Louis Blast Furnace Co. v. V. Ry. Co.* 360 (369).

**WEIGHT.** *See also* CAR SIZE, TRANSIT PRIVILEGES.

Loss of weight in milling at transit point. Transit case, 340 (356).

Rule 7 of express companies, providing for assessment of charges on actual weight, requires no change. In re Express Rates, 380 (407).

The weight basis for assessing charges should be the same for returned shipments as for shipments forwarded. *Id.* 380 (408).

Minimum weight found unreasonable. *Riverside Mills v. St. L. & S. F. R. R. Co.* 264; *Hardie Mfg. Co. v. O. R. R. & N. Co.* 545.

An initial carrier's tariff provided for a deduction in weight on account of moisture; a connecting carrier, which participated in the movement, neither concurred in such tariff nor had a similar tariff provision of its own: Held, that complainant was entitled to the deduction only on that part of the haul performed by the first carrier. *Hull Co. v. S. Ry. Co.* 302.

**WESTERN RATES.**

The Commission recognizes the difference in the rate adjustment east and west of the Mississippi River and has held that the basis obtaining west may properly be on a higher scale than that obtaining east. In re Advances on Apples, 38 (42).

**WHARVES AND WHARFAGE.**

It is the duty of defendant carriers to provide facilities for receiving flour reaching Buffalo via complainant steamship company, and if their facilities are inadequate, facilities must be provided elsewhere and at a charge no greater than would apply via their own docks. *Flour City S. S. Co. v. L. V. R. R. Co.* 179 (190).

**WILLAMETTE VALLEY.**

*R. R. Com. of Oregon v. S. P. Co.* 273 (275).

**WITHOUT PREJUDICE.** *See* RES ADJUDICATA.

**ZONE RATES.** *See also* GROUP RATES.

In re Advances on Sand and Gravel, 249; *Bitzer v. W.-V. Ry. Co.* 255 (258);

In re Express Rates, 380 (429); *Chamber of Commerce of New York v. N. Y. C. & H. R. R. Co.* 55 (60).















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